Affirmed — March 20 1865 Judgment
Argued
Black
Black's Counsel to be heard
Judgment to write

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 245.

EUGENE ROACH AND NAYLOR ROACH, BY HIS GUARDIAN AD LITEM, (ARCHY McGEHEE,) APPELLANTS,

vs.

EDWIN H. SUMMERS, JOHN S. BRANNINS, ABRAHAM O. BRANNINS, AND H. D. NEWCOMBE, PARTNERS AS SUMMERS & BRANNINS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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1 Pleas had at an adjourned term of the circuit court of the United States for the southern district of Mississippi, held pursuant to lawful adjournment, at the court-room in the city of Jackson, in said district, on Monday, the 22d day of January, in the year of our Lord one thousand eight hundred and seventy-two, and in the 96th year of the Independence of the United States of America. Present, the honorable Robert A. Hill, district judge, E. P. Jacobson, district attorney, M. Shaughnessey, marshal, and Geo. T. Swann, clerk.

SUMMERS AND BRANNINS, COMPL'TS,
vs.
EUGENE ROACH, EMILE SCHAEFFER, BREVORT Butler, R. M. Butler, and Roach, widow of J. W. Roach, dec'd, and Naylor Roach, and Roach, and Roach, children of J. W. Roach, dec'd, def'ts. } No. 81. N. S.

Be it remembered that heretofore, to wit, on the 6th day of March, A. D. 1869, the said complainants, by attorneys filed in the office of the clerk of said circuit court of the United States their bill of complaint against the said defendants, which with the process, proceedings,
2 orders, and decrees of said court thereon, is as follows, to wit:

To the honorable the judges of the circuit court of the United States, sitting in equity at Jackson, for the circuit court, in the southern district of Mississippi:

Edwin H. Summers, who is a citizen of the State of Louisiana, John S. Brannin, Abraham O. Brannin, and H. D. Newcomb, who are citizens of the State of Kentucky, and all partners doing business under the firm-name and style of Summers and Brannins, bring this their bill of complaint against Eugene Roach, Emile Schaeffer, Brevoort Butler, R. M. Butler, and Naylor Roach, child of J. W. Roach, dec'd, citizens of the State of Mississippi, defendants.

Complaining, your orators say that the defendant Eugene Roach and J. W. Roach, now dec'd, in the year 1867 leased to the defendants, Brevoort Butler and R. M. Butler, a plantation in the county of Yazoo, in the State of Mississippi, for the purpose of carrying on the business of cotton-planting. The said Butlers needed money and supplies for the purpose of purchasing mules, stock, farming implements, plantation supplies, the payment of hands, &c., necessary and requisite to carry on said business, and they, together with the defendants, Eugene
3 Roach and J. W. Roach, applied to your orators to make the necessary advances, proposing to secure the payment of the same by shipping the cotton that they would raise on the place, and that to the extent of $5,000, that might be so advanced, the said parties to wit, the said Eugene Roach and J. W. Roach, and the said R. M. and Brevoort Butler would execute their promissory note or notes payable to your orators, which notes they would secure by a mortgage upon a tract of land situated in the county of Yazoo and State of Mississippi, belonging to the said Eugene and J. W. Roach, and which your orators understood to be the same tract of land that the said Eugene and J. W. Roach had leased to the said R. M. and Brevoort Butler.

To this proposition your orators assented, and thereupon the said Eugene and J. W. Roach, and the said R. M. and Brevoort Butler executed their two promissory notes for the sum of $2,500 each, payable to your orator. Both of said notes are dated on the 1st day of February in

the year 1867, and payable on the 15th day of October, and the other on the 5th day of November after date, and both to bear interest at the rate of 8 per cent. per ann., after maturity until paid. Said notes will be hereafter filed, and, when filed, will be marked respectively Exhibits A and B, and are made a part of this bill; and on the 12th day
4 of February, in the year 1867, the said Eugene and J. W. Roach, to secure the payment of said notes, executed their deed of mortgage of that date, by which they conveyed to your orators a certain tract of land situated in the county of Yazoo and the State of Mississippi. Said mortgage was duly executed and recorded, and your orators here file the same, marked Exhibit C, and pray that the same may be taken as a part of this bill, and they refer to said Exhibit C for a full and particular description of the land conveyed, and also for the terms and conditions of the said conveyance. Your orators thereupon advanced in money and supplies, farming utensils, &c., to the said Butlers the amount of $5,000, and afterwards during the year, and from time to time as the necessities of the said Butlers in their planting operations required it, they also advanced to them other considerable sums of money, supplies, &c. The crop of cotton raised by the Butlers in the year 1867, was a very small one; the costs and charges, including revenue taxes, &c., in getting it to market, were very considerable, and the price for which cotton was selling was very low, so that the said Butlers paid very little of the debt due to your orators. They shipped to your orators of the crop of 1867, only bales of cotton, which sold for the nett sum of $. This sum was placed to the credit of the said
5 Butlers, and left due to your orators a large balance, to wit, the sum of $4,774.69 due to your orators, including the two notes aforesaid, on the 19th day of February, 1868. The said Butlers desired to continue planting cotton during the year 1868, and being without the necessary money and supplies for that purpose, applied to your orators to advance the same, offering to secure the amount so to be advanced during the year 1868, as well as the balance due as aforesaid on account of the advances made in 1867, by a deed of trust upon all the crops of corn and cotton they might raise on the plantation they were then cultivating in the county of Yazoo aforesaid, which crops they would ship for sale to your orators in New Orleans as soon as grown and ready for market, to be sold by your orators, and the nett proceeds to be applied in the first instance in payment of any supplies that might be furnished them during the year 1868, and any balance that might remain to be placed to the credit of the balance due as aforesaid, for the advances made in the year 1867.

Your orators acceded to this proposition, and on the 2nd day of April, in the year 1868, the said R. M. and B. Butler entered into their contract with your orators, whereby they bargained and sold to J. J. B.
6 Hilliard, for the use of your orators, "all the crops of cotton and corn" that might be grown during the year 1868 upon the plantation they were cultivating in Yazoo County aforesaid, and also binding and promising thereby to ship the said crops of cotton and corn as soon as grown and ready for markets, to your orators for sale, and the nett proceeds thereof when sold to be placed first to the payment of any supplies that your orators might furnish them during the present year, and the balance to be placed to the credit of the amount due as aforesaid for the notes and advances in the year 1867. The said contract, in case of the failure of said Butler to ship and apply the crops as therein specified, authorized the said Hilliard, on the request of your orators, to seize the crops, and after advertising the sale for ten days, to sell the same

to the highest bidder for cash, and after payment of expenses, to apply the proceeds to the payment of the debts secured by it as aforesaid. It was stipulated as part of said contract that it was taken for the additional security of your orators, and in no wise to affect or invalidate the security your orators then held, to wit, the notes and mortgage of the said Eugene and J. W. Roach and said Butlers. Your orators here file the assignment and contract so made, marked Exhibit "D," and
7 pray that the same may be taken as a part of this bill. Your orators from time to time, as they were needed by the said Butlers, made to them the advances of supplies as agreed upon during the year 1868, for the purpose of making the crop, which advances so made during the year 1868 amounted to the sum of $. The said Butlers raised on said plantation, during the year 1868, a small crop of corn and cotton, and from time to time shipped to your orators a portion of the cotton, amounting to about twenty-six bales. This cotton was sold and netted the sum of $1,390.56. Your orators had well hoped that the said Butlers would in good faith carry out said contract and continue to ship his cotton to be sold and applied in accordance with it. But they have been disappointed in these reasonable expectations. The said Butlers, disregarding their duty in the premises and the rights of your orators, and in the latter part of the month of November commenced shipping the cotton to other parties, in fraud of the rights of your orators, and had fifteen bales of it shipped to be sold by other parties, intending to appropriate the proceeds otherwise to their own uses, and not to the payment of the debt due to your orators. The said Butlers were in-
debted to the defendant, Eugene Roach, for rent, and he attached
8 this fifteen bales for rent due to him, and the proceeds were by said Roach sent to your orators, who placed them to the credit of the said Butlers' account.

After giving said Butlers credit for all the money paid and proceeds of cotton paid by them, they are still indebted to your orators in the sum of about $3,600 for money and supplies advanced during the year 1867 and 1868, including therein the two promissory notes aforesaid. Your orators further state that after the bad faith exhibited by the said Butler, and his attempt to divert the cotton raised as aforesaid from his proper uses, the defendant, Eugene Roach, became apprehensive of loss, both on account of his liability on the notes aforesaid, as well as for rent due to him, and he thereupon sued out an attachment returnable to the circuit court of Yazoo County, against the said Butlers. This attachment was sued out by the said Roach to secure the payment of the debt due by said Butlers and Roach on the notes to your orators as aforesaid, and also to secure the balance due to said Roach for rent. Under said attachment the said Roach had seized ten bales of cotton, being part of the crop raised as aforesaid by said Butlers on the plantation during the year 1868, and which was under mortgage and pledge by
9 assignment to your orators, a fact well known to said Roach when he sued out the attachment. Said Roach also attached the mules, farming utensils, corn, &c., on said plantation belonging to said Butler.

After the attachment was levied upon said cotton and other property, the said Butlers replevied the same, giving as his surety in the replevin bond, the defendant Schaeffer, who went upon said bond with the understanding that the property should be placed in his hands and be retained by him until the question of title was decided. This was accordingly done, the said cotton and other property attached, including the corn raised in the year 1868, by said Butlers as aforesaid, was placed in the hands of the said Schaeffer, who now has the same in his possession.

It may be that the said Schaeffer has sold the cotton and the corn, and, if so, he has the proceeds thereof in his possession, and is accountable for the same. In consequence of the conduct of the parties in the premises, the said Hilliard cannot obtain possession of said cotton or corn, and your orators have not requested him to act in the premises. They have not made him a party to this suit, as he resides in the State of Louisiana, and process cannot be served upon him.

10 The defendant J. W. Roach, since the execution of the mortgage aforesaid, has departed this life. He left him, surviving as his heir at law and distributees and devisees in his will, his widow, Mrs. J. W. Roach, who has since died, and one child, to wit, Naylor Roach; this child minor under the age of twenty-one years.

The defendant, Eugene Roach, has been appointed and has duly qualified and is acting as administrator, &c., of said J. W. Roach, dec'd, letters of administration having been duly granted to him; or it may be that said J. W. Roach made a will, which was probated, making the said Eugene his ex'or. If so, let the said Eugene file a copy of said will.

In tender consideration, &c., and as your orators are remediless, &c., they pray that the said Eugene Roach, R. M. Butler, Brevoort Butler, Emile Schaeffer, and Naylor Roach, minor child of said J. W. Roach, dec'd, be made defendants to this bill, that subpœnas issue, &c., and they be compelled to appear and answer, &c. Your orators pray that an account be taken of the amount due to your orators on the two notes secured by the mortgage made by the said Eugene and J. W. Roach; that an account be taken of the amount by the said R. M, and Brevoort Butler for the money and supplies due by them for the years 1867

11 and 1868. Your orators pray that a receiver may be appointed to take possession of the cotton and corn pledged and mortgaged to your orators by the said Butlers in the year 1868, and that the said Schaeffer be ordered to deliver such portion of the same as he has in his possession; or, if he has sold any of it, that he deliver the proceeds of the same to said receiver. At the final hearing, your orators pray for a decree in their favor, directing the payment of the proceeds of said crops of corn and cotton raised in 1868 by said Butlers, after the same shall have been sold, to the payment of whatever may be due to your orators for supplies advanced to them in the year 1868, and if any balance remains thereof, that it be applied to the payment of the notes of the said Eugene and J. W. Roach, and said Butlers secured by the mortgage aforesaid. They also pray that the said mortgage executed by the said Eugene and J. W. Roach be foreclosed, that the equity of redemption of the said Eugene Roach, and the widow and heirs at law aforesaid of said J. W. Roach, be barred and foreclosed; and that unless the amount due to your orators on the notes secured by said mortgage be paid to your orators at some short day, that the property included in said mortgage be sold, and the proceeds arising from

12 said sale be applied in payment of the amount due on said notes.

Your orators further pray, that if anything shall remain due after the application of the proceeds of the sale of said mortgaged property, that your honors will decree that the said Eugene Roach, individually and as administrator or executor, &c., of J. W. Roach dec'd, shall be decreed to pay the same, and that execution issue according. They also pray for a decree for any balance after applying said mortgaged property against the said Butlers, and that execution may issue accordingly. Or, if mistaken in the relief asked, your orators pray for such other, further, and additional relief as in equity they are entitled to. And as in duty, &c.

YERGERS, *Sol'rs.*

We acknowledge ourselves as security for costs in this case.
Given under our hands and seals this 6th March, 1869.
W. & J. R. YERGER. [SEAL.]

Bill and Exh. C and D filed, and spa. iss'd to Ap'l rules, March 6, 1869.
G. T. SWANN, *Clk.*

Exhibit C, referred to in and filed with the foregoing bill of complaint is as follows, to wit:

Ten (fifty-cent internal-revenue stamps affixed on the margin of this exhibit. Cl'k.)

EXHIBIT "C."

13 This indenture, made and entered into this the 12th day of February, A. D. 1867, by and between J. W. Roach and Eugene Roach, parties of the first part, of the county of Warren and State of Mississippi, and E. H. Summers, A. O. Brannin, J. S. Brannin, and H. D. Newcomb, of the city and parish of New Orleans, State of Louisiana, parties of the second part, witnesseth: That for and in consideration of the sum of five thousand dollars, to the parties of the first part paid by the parties of the second part, (in hand,) the receipt of which is hereby acknowledged before the signing, sealing, and delivering of these presents; the parties of the first part hereby grant, bargain, sell, alienate, and convey unto the parties of the second part the following-described land and premises, to wit, situated, lying, and being in the county of Yazoo, and State of Mississippi, and known as lots No. one, (1,) and No. two, (2,) in the division of the lands of Harvey Oneal, deceased, and more particularly described as follows, viz: Lot No. one, (1,) commencing at a stake the northeast corner of the dower of Nancy Oneal; from thence along the north boundary of said dower, forty chains and fourteen links to a stake; thence due north thirteen chains and eighty-seven links to a stake; thence east forty chains and four-
teen links to a stake; thence due south thirteen chains and
14 eighty-seven links to the beginning. This share is lying and being the north end of the east half of the southeast quarter of section two, in township ten, range three, west, containing fifty-five and $\frac{67}{100}$ acres. Lot No. two is bounded as follows: beginning at a stake the northeast corner of share No. one; from thence due west along the north boundary of said share No. one, in part, sixty chains and twenty-one links to a stake, the half-section post in line between section two and three, township ten, range three, west; from thence due north along said section line, twelve chains and thirteen links to stake; from thence due east sixty chains and twenty-one links to stake; from thence due south twelve chains and thirteen links to the beginning; lying and being the south end of the west half of the northeast quarter of section two, in township ten, range three west, and south end of the northwest quarter of section two, township ten, range three west, containing seventy-three and $\frac{63}{100}$ acres. Also three undivided three-fifths of the land allotted and set apart to Nancy Oneal for her dower, in the lands of said Harvey Oneal, described as follows, to wit: beginning at a stake in the line between sections two and eleven, in township ten, range three west; from thence due north twenty-four chains and seventy-seven links to a stake; thence due west forty chains and fourteen links

to a stake; thence due south twenty-four chains and seventy-seven links to a stake in the aforesaid section line; from thence due east along said section line to the beginning; being on the south end of the west half of the southeast quarter of section two, in township ten, range three west, and the east half of the southwest quarter of section two, in township ten, range three west. Also those lands embraced in the field-notes or survey of the lands belonging to Harry Oneal, on file in the office of the probate clerk of Yazoo County, State of Mississippi, which were allotted to Elizabeth Oneal, being share No. three (3) of said survey, together with two-fifths of the interest in said survey, allotted to Nancy Oneal for dower; all being in township No. ten, of range three west, and believed to be situated chiefly in the northwest fourth and west half of northeast fourth and west half of southeast fourth of section two, in the above township and range; and east half of southwest quarter or fourth, in same section. To have and to hold to the parties of the second part, their heirs and assigns, forever, in fee simple, together with all and singular the premises, rights, ways, privileges, tenements, and hereditaments thereunto belonging, or in anywise appertaining; and the parties of the first part hereby warrant, and will forever warrant, and their heirs, executors, or administrators shall forever warrant and defend the title to the above-described land and premises against the claim or claims of any and all persons whomsoever, both at law and in equity.

The condition of the above obligation is such that whereas the said J. W. Roach and Eugene Roach, parties of the first part hereto, and R. M. Butler and Brevoort Butler, executed their certain promissory note in New Orleans, Louisiana, dated Feb. 1st, A. D. 1867, to Summers and Brannins, payable on the fifth of November after date, for the sum of twenty-five hundred dollars value rec'd, with interest at eight per cent. per annum from maturity until paid, and one note having been executed by the same parties on the same date, payable to the firm of Summers and Brannins for the like sum of twenty-five hundred dollars, due the fifteenth of October after date for value rec'd, with interest at eight per cent. per annum from maturity until paid. Now, therefore, if the said parties of the first part shall pay to the parties of the second part, or cause to be paid to them, their heirs, executors, assigns, &c., the amounts specified in said promissory notes mentioned, together with the interest accruing thereon at the time, and upon the conditions specified therein, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this the day and date first above written.

J. W. ROACH. [SEAL.]
E. ROACH. [SEAL.]

STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me, Warren Cowan, judge of the probate court of Warren County, J. W. Roach and Eugene Roach, who signed the above instrument of writing, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their proper act and deed for the purposes therein set forth and specified.

In testimony whereof I have hereunto set my hand and seal this the 12th day of February, A. D. 1867.

WARREN COWAN, [SEAL.]
Judge of the Probate Court, Warren County.

THE STATE OF MISSISSIPPI,
Yazoo County, sct:

I, M. A. Jenkins, clerk of the probate court of said county, certify that the instrument of writing to which this certificate is attached, from J. W. and E. Roach to Summers and Brannins, was filed in my said office for record on the 2 day of March, 1867, and that the same has this day been duly made of record therein in Book X, of the record of deeds, &c., of said county, on pages 336, 337, and 338.

18 Given under my hand and the seal of said court at Yazoo City, this 2 day of March, eighteen hundred and sixty-seven.

[L. S.] M. A. JENKINS, *Clerk.*

(Endorsed:) Filed March 2d, 1867. Recorded same day in Book X, pp. 336, 337, & 338.

M. A. JENKINS, *Clerk.*

Exhibit "C" to bill. Filed 6 March, 1869.

G. T. SWANN, *Clk.*

Exhibit "D," referred to in and filed with said bill of complaint, is as follows, to wit:

EXHIBIT "D."

This indenture, made this 2nd day of April, 1868, between R. M. and B. Butler, of Yazoo County, State of Missisippi, of the one part, J. J. B. Hilliard, trustee, of the second part, and Summers and Brannins, a commercial firm of the city of New Orleans, of the third part, witnesseth:

That whereas the said Summers and Brannins did advance to the said R. M. and B. Butler, during the year 1867, a large amount of money for the purpose of aiding them in making a crop of cotton, corn, &c., which advances were secured by the joint obligation of the said Butlers, and of Eugene Roach and J. W. Roach, secured by mortgage on real estate. And whereas there was due on the 19th of Feb'y, 1868, a large balance to said Summers and Brannins, to wit: the sum of forty-

19 seven hundred and seventy-four $\frac{69}{100}$ dollars, which balance, together with ten per cent. interest since that date, is still due and unpaid. And whereas it may be necessary, in order to enable said R. M. and B. Butler to cultivate another crop, that said Summers and Brannins should furnish them some further supplies; now, in order the further to secure the said Summers and Brannins for the amount already due and unpaid as aforesaid, as well as for any further advances that they may make on the crop, growing or to be grown the present year, together with interest, commissions, &c., as aforesaid, we, the said R. M. and B. Butler, do by these presents hereby transfer and convey to said J. J. B. Hilliard, trustee, for the use and benefit of said Summers and Brannins, all the crops of corn and cotton that may be grown the present year on the plantation we are now cultivating in the county and State aforesaid, hereby binding and obligating ourselves to ship the same as soon as grown and ready for market to the aforesaid firm of Summers and Brannins, the nett proceeds thereof, when sold, to be placed first to the payment of any supplies furnished by them the present year, and the balance, if any, to be placed to the credit of the amount due from last year, as herein stated.

20 And in case of the failure or refusal of the said R. M. and B. Butler to so ship and apply the crops aforesaid, as herein speci-

fied, the said J. J. B. Hilliard is hereby authorized, upon the request of Summers and Brannins, to seize said crops, and after advertising them for ten days in three or more public places in said Yazoo County, to sell the same for cash to the highest and best bidder; and after the payment of the expenses necessary to the execution of this trust, to apply the balance, if any, to the payment of the debt due and to become due said Summers and Brannins as herein specified. And in case said Hilliard cannot act as trustee as herein stipulated, the said Summers and Brannins may appoint in writing another trustee who shall be fully empowered to act.

This deed of trust is given as further and additional security, and is is in no way to affect or invalidate the security already held by said Summers and Brannins.

Given under our hands and seals the day and date above mentioned.

R. M. AND B. BUTLER.

[Revenue stamps affixed & cancelled.]

STATE OF MISSISSIPPI,
Yazoo County:

This day personally appeared before me, Geo. A. Gibbs, circuit clerk in and for the county and State aforesaid, R. M. Butler, who acknowledged that he signed, sealed, and delivered the within instrument
21 of writing as his lawful act and deed, and on behalf of the firm of R. M. and B. Butler, and for the purposes therein specified.

Witness my hand and seal of said court this 1st day of May, 1868.

[L. S.] G. A. GIBBS, *Clk.*

(Endorsed:) Filed May 1st, 1868.

G. A. GIBBS, *Clk.*

Exhibit D to bill. Filed 6 March, 1869.

GEO. T. SWANN, *Clk.*

Exhibits "A" and "B" referred to in said bill of complaint, and filed at a date subsequent to the filing of said bill, to wit, March 16, 1869, are as follows, to wit:

EXHIBIT "A."

$2,500] NEW ORLEANS, *February 1st*, 1867.

On the fifteenth day of Oct., after date, we, or either of us, promise to pay to the order of Summers and Brannins twenty-five hundred dollars value received, with interest at the rate of eight per cent. per annum from maturity until paid. Payable at the Canal Bank of New Orleans.

This note is given for supplies.

R. M. BUTLER.
BREVOORT BUTLER.
J. W. ROACH.
E. ROACH.

(Endorsed:) Exhibit A to bill. Filed 16 M'ch, 1869.

GEO. T. SWANN, *Clk.*

22 EXHIBIT "B."

$2,500.] NEW ORLEANS, *February 1st*, 1867.

On the fifteenth day of Nov'r, after date, we, or either of us, promise to pay to the order of Summers and Brannins twenty-five hundred dollars value received, with interest at the rate of eight per cent. per annum from maturity until paid. Payable at the Canal Bank of N. O.

This note is given for supplies.

R. M. BUTLER.
BREVOORT BUTLER.
J. W. ROACH.
E. ROACH.

(Endorsed:) Exhibits B to bill. Filed M'ch 16, 1869. G. T. Swann, cl'k.

And at the date of filing said bill of complaints, to wit, the 6th M'ch, 1869, a writ of subpœna was issued in this cause, which, with the returns endorsed thereon, is as follows, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, S. C.:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded without delay to summon Eugene Roach, Schaffer, Brevoort Butler, R. M. Butler, and Roach, widow of J. W. Roach, dec'd, and Naylor Roach, and
23 Roach, and Roach, children of J. W. Roach, dec'd, who are citizens of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said court on the first Monday in April next, to answer a bill in equity exhibited against them by Edwin H. Summers, who is a citizen of the State of Louisiana, John S. Brannin, Abraham O. Brannin, and H. D. Newcomb, who are citizens of the State of Kentucky, and all partners under the firm-name and style of Summers and Brannins, and unless they shall enter their appearances therein, in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 6th day of March, A. D. 1829, and in the 93rd year of the Independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

U. S. MARSHAL'S OFFICE.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

I hereby nominate and appoint H. M. Thompson, jr., my special deputy to execute and return the within process according to law.

Witness my hand and seal this 7th day of March, 1869.

R. H. WINTER, [SEAL.]
U. S. Marshal Southern District Misissippi.

24 I have this day executed and served this writ in person on Brevoort Butler and R. M. Butler, Emile Schaeffer, and on Eugene

Roach, through his attorneys, Messrs. Wilkinson and Bowman, leaving a copy of the writ with each of the parties.

Yazoo City, March 17, 1869.

R. H. WINTER,
U. S. Marshal.
P'r H. M. THOMPSON, JR.,
Dep'ty U. S. Marshal.

U. S. MARSHAL'S OFFICE.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

I hereby nominate and appoint C. M. Benbrook my special deputy, to execute and return the within process, according to law.

Witness my hand and seal this 22d day of March, 1869.

R. H. WINTER. [SEAL.]
U. S. Marshal, Southern District Mississippi.

Mrs. Roach, widow of J. W. Roach, dec'd, and Naylor Roach, and Roach, and Roach, children of J. W. Roach, deceased, cannot be found in this district.

Natchez, March 30th, 1869.

R. H. WINTER,
U. S. M. S. D. M.,
By C. M. BENBROOK,
Special Deputy U. S. M.

And on the 11th day of March, 1869, came the complainants, by attorneys, and filed an amendment to their original bill of complaint in this cause, in the words and figures following, to wit:

25 UNITED STATES OF AMERICA,
Southern District of Mississippi:

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } N. S. 81. In equity.

In this case complainants amend their bill by inserting the Christian name of the defendant Schaeffer, and by inserting the Christian name of the child of J. W. Roach, dec'd, to wit, Naylor Roach, and by stating the death of Mrs. J. W. Roach, widow of J. W. Roach, dec'd; and also by making the averment that J. W. Roach left him surviving one child as his heir at law and devisee, instead of three children, the word "three" being erased, "one" inserted, and erasing the name of Mrs. J. W. Roach as a defendant from the bill, March 11, 1869.

W. AND J. R. YERGER.

Filed 11 March, 1869. Geo. T. Swann, cl'k.

And on the 22nd day of March, 1869, came the defendants Brevoort Butler, R. M. Butler, and Emile Schaeffer, by attorneys, and filed their demurrer to the bill of complaint in this cause as follows, to wit:

THE UNITED STATES OF AMERICA,
Southern Dist. Miss.:

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET ALS. } N. S. 81. To May T, 1869. Chancery.

26 *The demurrer of Brevoort Butler, R. M. Butler, and Emile Schaeffer to the above-named bill of complaint.*

These defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true, in manner and form as the same are therein set forth, but saving and reserving, &c., doth demur in law to said bill of complaint, and for causes of demurrer state the following:

1st. The said bill shows on its face that complainants have no ground for any discovery from, or relief against said defendants, or either of them.

2nd. The bill, by the case therein made and stated, shows that, as against these defendants, complainants have full and ample relief in a court of law, and that a court of equity hath not jurisdiction.

3rd. The bill does not show any sufficient ground for relief in a court of equity.

4th. The bill is multifarious.

5th. The bill seeks to foreclose a mortgage lien or pledge on personalty, which had no existence at the time the incumbrance was made, but which, on the contrary, was produced afterwards.

6th. Said bill is, in other respects, uncertain, informal, and insufficient.

JOHNSTON AND JOHNSTON,
Sol'rs for said Def'ts.

We waive the affidavit and certificate required by rule of court, March 22, 1869.

W. AND J. R. YERGER, *Sol'rs.*

Filed M'ch 22d, 1869. Geo. T. Swann, cl'k.

27 And on the 5th day of April, 1869, the following motion for a receiver was entered in this cause, to wit:

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } N. S. 81. In equity.

Complainants move for the appointment of a receiver as prayed for in the bill—Yergers for motion, Johnston and Johnston contra.

Filed and ent'd Ap'l 5, '69. G. T. Swann, cl'k.

And on the 5th day of April, 1869, a day of the term of said court begun and held in the court-room at Jackson, in said State of Mississippi, on the 5th day of April, A. D. 1869, the following order appointing a receiver in this cause was made by said court and entered upon the minutes thereof, to wit:

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } N. S. 81. In equity.

On motion of complainants, it is ordered by the court that Joshua

Green be appointed a receiver in this cause, upon his entering into bond in the penal sum of $2,000, with security, to be approved by this court, conditioned for the performance of his duties as receiver. It is further ordered that the defendant Emile Schaeffer deliver to the
28 said Joshua Green, upon his demand as receiver, the ten bales of cotton in his hands, and which had been attached as the property of R. M. and Brevoort Butler, in a suit begun by attachment against them by Eugene Roach in the circuit court of Yazoo County; or, if said cotton has been sold, then the said Schaeffer is hereby ordered to pay over to said Green the money realized from the sale of said cotton. If the said cotton has not been sold, the said Green, as receiver, shall forthwith sell the same, either in Yazoo City or in New Orleans, as he may deem most advisable.

And, on the 6th day of April, 1869, the following receiver's bond was filed in this cause, to wit:

Know all men by these presents that we, Joshua Green and Thomas Green, are held and firmly bound unto the honorable Robert A. Hill, district judge of the United States, and his successors in office, in the penal sum of two thousand dollars, for which payment well and truly to be made, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents. Given under our hands and seals this 6th day of April, in the year 1869.

The condition of the above obligation is this: Whereas the above-bound Joshua Green has been appointed receiver in the case of
29 Summers and Brannins vs. Eugene Roach et al., N. S. 81, in equity, and has been required before entering upon the duties of his office to execute bond for the performance of his duties.

Now, if the said Joshua Green will receive and safely keep all money or property that many come into his hands as receiver, and will render full and true accounts of his receipts and disbursements, and of the condition and situation of the money and property in his hands as often as he may be required by the court, and will dispose of and deliver such money and property in such manner and to such persons as the court may at any time direct, and will in all things discharge the duties of his office as receiver, then this obligation shall be void; otherwise it shall remain in full force and virtue.

JOSHUA GREEN. [SEAL.]
THO. GREEN. [SEAL.]

Approved. R. A. HILL.

Filed 6th April 1869. Geo. T. Swann, cl'k.

And on the 3rd day of May, 1869, a day in said special April term, 1869, of said circuit court, the following order was made in this cause by said court, to wit:

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET AL. } N. S. 81. In equity.

This cause is this day submitted to the court upon the demurrer of defendants Brevoort Butler, R. M. Butler, and Emile Schaeffer to complainant's bill.

30 (On the 3rd day of May, 1869, an alias subpœna for Eugene and Naylor Roach, to the June rules, was issued in this cause and the same does not appear to have ever been returned.—*Clk.*)

And afterwards, on the 4th day of May, A. D. 1869, a day of the term of said court begun and held in the court-room at Jackson, in said State of Mississippi, on the 5th day of April, A. D. 1869, the following decree, overruling the demurrer, filed in this cause by R. M. and B. Butler, and Emile Shaeffer, was rendered by said court and entered upon the minutes thereof, to wit:

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET ALS. } N. S. 81. In equity.

This cause having been submitted at a former day, upon the demurrer of R. M. and B. Butler, and Emile Schaeffer, and the court being of opinion that the demurrers are not well taken: It is therefore ordered that said demurrer be overruled, and that the said defendants have sixty days within which to file their answers; but the time so given shall not prejudice the right of complainants to set said cause for trial at the next term of the court, upon bill, answers, and proof, although three months after filing of replication to answers may not have then expired.

31 On the 6th day of May, 1869, the following answer of Eugene Roach to the bill of complain't herein was filed in said court, to wit:

The answer of Eugene Roach to a bill of complaint exhibited against himself and others in said court, by Edwin H. Summers, John S. Brannin, Abraham Brannin, and H. D. Newcomb, complainants.

To the honorable the judge of the circuit court of the United States, sitting in equity at Jackson, for the circuit court in the southern district of Mississippi:

This respondent, saving and reserving all manner of exceptions, &c., for answer to said bill, or so much thereof as he is advised is material for him to answer, answering, says, that he admits the execution of the notes and mortgage as charged in said bill. This respondent further answering, says, that said notes made by his codefendants, R. M. Butler, Brevoort Butler, and this respondent, and J. W. Roach, secured by the mortgage made by respondent and J. W. Roach, deceased, were by express agreement with complainants to be paid from the proceeds of the crops of said Butlers, from year to year, until the same were fully satisfied; and this respondent now insists that he is entitled to have all the money received by said complainants from the crops of
32 said Butlers applied as a credit on the said notes. Respondent denies that complainants are entitled to foreclose their mortgage made by this respondent and J. W. Roach, deceased, except for the balance due, if any, upon said notes, after applying as credits thereon all the payments received from said Butlers, as set forth in complainant's ; and the property and proceeds thereof in hands of the receiver in this cause, or which may come to his hands. Having fully answered, this respondent prays to be hence dismissed with his costs, &c.

WILKINSON AND BOWMAN.

Filed May 6th, 1869. G. T. Swann, cl'k.

I waive affidavit to answer by def't Roach.
May 11th, 1869.

YERGERS,
Sols. for Compl'ts.

On the 11th day of May, 1869, the following replication to the answer of defendant Eugene Roach was filed by complainants, to wit:

SUMMERS & BRANNINS
vs.
EUGENE ROACH ET ALS. } N. S. 81. In equity.

Complainants, for replication to the answer of defendant Eugene Roach, filed herein, come and say that the allegations and statements in complainants' bill, as therein set forth and alleged, and the statements and allegations in the answer of the defendant Eugene
33 Roach, as therein set forth, are not true, and this they are ready to maintain and prove as the court shall direct.

YERGERS,
Sols. for Compl'ts.

Filed May 11th, 1869. G. T. Swann, cl'k.

On the 7th day of June, 1869, an alias subpœna for Naylor Roach was issued in this cause, which, with the returns thereon, is as follows, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, as once before, without delay to summon Naylor Roach, a minor, residing in said southern district, and who is a citizen of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said court, on the first Monday in July next, to answer a bill in equity exhibited against him and others by Edwin H. Summers, a citizen of the State of Louisiana, John S. Brannin, Abraham O. Brannin, and H. D. Newcomb, citizens of the State of Kentucky, and all partners under the firm-
34 name and style of Summers and Brannins, and unless he shall enter his appearance therein, in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 7th day of June, A. D. 1869, and in the 93rd year of the Independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

(Return endorsed:) Received June 8th, 1869.
E. A. PEYTON, *U. S. Marshal.*

Executed personally by delivering a copy of the within writ to Naylor Roach, this 18th of June, A. D. 1869.

E. A. PEYTON, *U. S. Marshal,*
By W. L. JONES, *Dep'ty.*

On the 1st day of July, 1869, Eugene Roach, by attorneys, filed his

separate answer to the bill of complaint in this cause, which said answer, with the exhibits, numbered 1 to 7 inclusive, are as follows, to wit:

Answer of Eugene Roach.

To the honorable the judge of the circuit court of the United States sitting in equity at Jackson for the circuit court in the southern district of Mississippi.

35

The separate answer of Eugene Roach to a bill of complaint exhibited against him and others in said court by Edwin H. Summers, John S. Brannin, Abraham Brannin, and H. D. Newcomb, partners in business under the firm-name and style of Summers and Brannins.

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering, says, that he admits the lease of the plantation in Yazoo County, Mississippi, by himself and J. W. Roach, dec'd, to Brevoort and R. M. Butler for the year 1867, as charged in said bill. Respondent denies that he solicited complainants or applied to them to make advances of money and supplies to said Butlers. Admits the making of the promissory notes, and the execution of the mortgage to secure the same, as charged in said bill, for plantation supplies to be advanced by said complainants during the year 1867 to said R. M. and Brevoort Butler. Respondent, further answering, says that the only consideration of said notes was the plantation supplies to be thereafter furnished said Butlers by said complainants, and this respondent and J. W. Roach, deceased, were by agreement and understanding by and between all parties to said notes, to be liable thereon only for the amount of supplies actually advanced or furnished for said year, and in no event were they to be responsible for an amount greater than the sum specified in the aforesaid notes. This respondent, further answering, says, that it was agreed and understood by and between said complainants and said Butlers that all the crops of cotton raised on said plantation, so leased to said Butlers, should be applied to the payment of the aforesaid promissory notes, and that the same should be shipped by said Butlers, for that purpose, as rapidly as it could be prepared for market. Respondent, further answering, says, that he and J. W. Roach, deceased, were only sureties on said notes, and in order to have the same paid, that this respondent and said J. W. Roach took no steps to collect the rent due them from said Butlers, so that the entire crop of cotton raised by them should be applied to the payment of the said notes. This respondent, further answering, says that said Butlers, in November, 1867, shipped to said complainants twenty-four bales of cotton, which was sold by them for the nett sum of one thousand and sixty-seven dollars and seventy-three cents, and between the 2d of January, 1868, and the 19th of February of that year, the said complainants received from said Butlers five other bales of cotton, which were sold by them for the sum of two hundred and twenty-four $\frac{10}{100}$ dollars, making the aggregate nett proceeds of the crop of 1867 twelve hundred and ninety-one dollars and eighty-three cents. This respondent, further answering, says that after making the aforesaid promissory notes, and executing the mortgage, as aforesaid, to secure the same, and after the understanding and agreement, as

36

37

aforesaid, that the entire nett proceeds of the crops raised on said leased plantation, by said Butlers, should be applied to the payment of said notes, the said complainants and said Butlers entered into a written agreement by which the said complainants, in consideration of supplies to be advanced, were to have an interest in the crops of cotton raised by said Butlers for the year 1867, and the same was to be shipped to them, said complainants, and the said Butlers were to pay two and a half per cent. commissions to said complainants for such advancement of supplies, and ten per cent. interest on said advancements, and in addition were to charge the usual commissions for selling. A true copy of said agreement is herewith filed, marked Exhibit No. 1, and made part hereof. This respondent, further answering, says that said agreement was made in bad faith to this respondent and his intestate, J. W. Roach, deceased, because it was in violation of the understand-
38 ing between all the parties at the time said notes were made. It was a covert and indirect attempt, by usurious charges of interest and commissions, to swallow up and absorb the proceeds of the cotton crop of the Butlers, and thus leave your respondent and his intestate liable for the payment of said notes, contrary to the distinct understanding at the time they were made. This respondent, further answering, says that neither himself, nor his intestate, J. W. Roach, deceased, would have signed said notes, nor executed said mortgage, but for the fact that they were induced by the agreement or promise that the crops should be appropriated to the payment thereof, and that said complainants would not advance more than the amount of said notes for said year. Respondent, further answering, says that said complainants and the said Butlers entered into the aforesaid agreement, marked Exhibit No. 1, without the knowledge, consent, or approval of this respondent and his intestate, J. W. Roach, deceased, and that its existence was not known to this respondent until within a few days past, and, as this respondent believes, was never known to his intestate, J. W. Roach, deceased. This respondent, further answering, says that complainants discounted the aforesaid promissory notes, at a usurious rate, upon the day ot their dates, to wit, the first day of February, 1867, and gave said R. M. and B. Butler credit on the note due on 15th of
39 October for the sum of twenty-two hundred and fifty-six $\frac{39}{100}$, and on the note due 1st of November they credited the said Butlers with twenty-two hundred and forty-six $\frac{69}{100}$ dollars, and on the day said notes are respectively due said complainants charge the said Butlers, in their account against them, with the full amount of said notes, and for all monies or supplies advanced they charge said Butlers ten per cent. interest, and two and a half per cent. for all advances, including the aforesaid promissory notes, as will appear by a copy of the account rendered against said Butlers by said complainants, which is herewith filed, marked Exhibit number "2."

This respondent, further answering, that instead of complainants advancing said Butler's plantation supplies to an amount not exceeding five thousand, as said bill charges they agreed to do, they, the said complainants, advanced them chiefly money, and by their system of usurious charges for discount, commissions, &c., as before stated, they brought out a balance of $\$4,774\frac{69}{100}$ against said Butlers for the year 1867.

This respondent, further answering, says that he is advised and believes that said agreement, Exhibit No. 1 to this answer, and the transactions between said complainants and said Butlers, were in bad
40 faith to him and his intestate, J. W. Roach, deceased, and were a

fraud upon them, and that they are not in law responsible for any amount on said notes, *for* except the difference between the amounts thereof, or the amount of supplies actually advanced not exceeding the amount of said notes and the nett proceeds of the cotton-crops.

This respondent, further answering, says that said complainants, as he is informed and believes, well knew that this was the understanding, and that they so wrote to the Butlers on the 25th of March, 1867. A true copy of their letter is herewith filed, marked Exhibit No. 3, and made part hereof.

Respondent, further answering, says that complainants well knew that said cotton was to be applied to said notes, and in pursuance of this understanding they so wrote to the Butlers. A copy of their letter is herewith filed, marked Exhibit No. 4, and made part hereof.

This respondent, further answering, says the aforesaid agreement, marked Exhibit No. 1 to this answer, and the subsequent dealings between said complainants and the said Butlers, as shown by the account Exhibit No. 2 hereto, was, as he is advised and believes, an abandonment of the original contract or agreement based on said promissory notes and mortgage, and operates as a release of your respondent and the estate of his intestate, and he claims in law all the bene-
41 fit and advantage thereof, as if the same were by him specially pleaded.

Your respondent, further answering, says that said agreement Exhibit No. 1, and its manner of execution, as shown in Exhibit No. 2, was a new contract, inconsistent and irreconcileable with the original contract for the advancement of supplies secured by said mortgage and notes, and the effect and operation thereof, as he is advised, is a cancellation and annulment of the promissory note and mortgage contract.

Respondent, further answering, admits the execution of the trust-deed, referred to as Exhibit "D," to said bill. This respondent says that he knew nothing of its terms or of its existence until some time last December. Respondent says that said trust-deed was not recorded in the record of deeds for Yazoo County. Respondent denies that said trust-deed refers in terms to the notes and mortgage made by himself and his intestate. Respondent was not a party to said trust-deed, nor was his intestate, J. W. Roach; and he denies that he or the estate of his intestate can in any manner be affected or bound by any recital therein.

Respondent, further answering, says that, ignorant of the aforesaid agreement, Exhibit No. 1, he appropriated or turned over to complainants fifteen bales of cotton of the said Butlers which he had attached for rent of the leased premises, as charged in said bill, to
42 be credited on aforesaid promissory notes, and not to be applied to the indebtedness of said Butlers under said agreement or contract as rendered in said Exhibit No. 2. This respondent says that said fifteen bales of cotton sold for twelve hundred and sixty-nine $\frac{52}{100}$ dollars, and this respondent would not have so appropriated the proceeds thereof to said complainants had he known the abandonment of contract with complainants to which he and the Butlers were parties, as before stated in this answer.

Respondent, further answering, says that, in addition to said fifteen bales of cotton, said Butlers shipped to said complainants twenty-six other bales, amounting in the aggregate to the nett sum of twenty-four

hundred dollars and fifty cents. This respondent says that whilst he does not admit but denies upon advice that he is liable upon the aforesaid promissory notes, yet, if he should be held liable thereon, he claims and insists that all of said crops of 1868 shall, upon the original agreement or contract, be applied to the payment of said promissory notes in preference to the general indebtedness of said Butlers.

Respondent, further answering, says that, in the account of 1868, of complainants against said Butlers, there are a large number of items not properly plantation supplies, among which are and
43 Young attorneys' fees $130.00; bill for North and Hartigan, $70.86; justice and constable fees, $22.22, and McMaster's expenses to Vicksburg, $20.00, with interest thereon, all of which charges your respondent are expenses incurred by said Butlers in defending the suit for distraining or attaching said fifteen bales of cotton, and the proceeds of the sale of which respondent paid to said complainants to be credited on said notes; besides these items, there are many others which are not for plantation supplies, as will appear by reference to a copy of the said account rendered by said complainants to said Butlers, containing the items and amounts thereof, as well also as the nett proceeds of the the sale of the cotton of said Butlers, received by said complainants, and which is herewith filed as Exhibit No. 5, and made part hereof. Respondent, further answering, says that if the said proceeds of cotton for the year 1868 cannot be applied to the payment of said notes, in preference to the account for supplies furnished by said complainants to said Butlers to carry on the plantation leased from this respondent, then he insists that said account, No. 5, shall be surcharged and expurgated of all items and charges not strictly for plantation supplies, as said trust-deed, marked Exhibit D, to complainants' bill, only gives a lien on said cotton and other property therein conveyed for plan-
44 tation supplies to be advanced by said complainants to said Butlers.

Respondent, further answering, says that he admits suing out the attachment against said Butlers. Denies that it was on account of said promissory notes, but says that it was on account of rent due by said Butlers to him. Respondent says that he knows nothing about the sum of about $3,600 due by said Butlers to said complainants, and if to be affected thereby requires strict proof. Respondent admits that ten bales of cotton, in addition to those already mentioned, were levied on under an attachment as charged in complainants' bill against said Butlers; and, also, a number of mules, farming-utensils, &c. Admits the said Butlers replevied said property; that Emile Schaeffer was the surety on his replevin bond; admits the property, including cotton, mules, &c., was retained in hands of said Schaeffer as charged in said bill. Respondent, further answering, says that said mules were worth at the time of said attachment, at least fifteen hundred dollars; and the cotton received by said Schaeffer was worth dollars, and sold for said amount.

This respondent, further answering, says, that if he is liable on the aforesaid promissory notes, which he denies for the reasons before
45 stated, he insists that said mules and last-mentioned cotton and farming utensils, attached as aforesaid, shall be first sold, if not already sold, and the proceeds thereof applied to the payment of the balance, if any, due on said promissory notes before the lands mortgaged by this respondent and J. W. Roach, dec'd, to secure said promissory notes, and that the proceeds of the cotton, as before stated, be applied to the payment of said notes. This respondent, further answer-

ing, says that, under the aforesaid agreement, marked Exhibit No. 1, to this answer, he is advised and believes that complainants became partners of said Butlers in said plantation, leased from this respondent and J. W. Roach, dec'd, and that they, said complainants, thereby became liable to pay the rent therefor. Respondent, further answering, says that the rent of said plantation was two thousand dollars per annum, and that there was a written agreement therefor, a copy of which is herewith filed, marked Exhibit No. 6, and made part hereof, and made part of this answer, and the original whereof will be read on the final hearing of this cause. Respondent insists that, if liable on said promissory notes, which he denies, that said amount of rent for 1867 and 1868 shall be credited on said notes, as well also as the proceeds
46 of the cotton crops of said Butlers for said years. Having fully answered, he prays to be hence dismissed with his reasonable costs.

WILKINSON AND BOWMAN.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

Before me, R. B. Mayes, a United States commissioner at the town of Yazoo City, in the county of Yazoo, State of Mississippi, in and for the district aforesaid, this day appeared Eugene Roach, the defendant in the foregoing answer, who, on oath, says that the matter, and things therein contained and set forth as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

E. ROACH.

Sworn to and subscribed before me this 26 day of June, A. D. 1869.
R. B. MAYES,
U. S. Commissioner.

Filed & ent'd July 1st, 1869. G. T. Swann, clerk.

Exhibit No. 1 to answer of Eugene Roach.

STATE OF MISSISSIPPI,
Yazoo County:

We, Summers and Brannins, a commercial firm of the city of New Orleans, State of Louisiana, have this day entered into the following trade, contract, and agreement with R. M. and B. Butler; that is to say, the said R. M. and B. Butler are engaged in the cultivation
47 of a crop of cotton and other products on the Roach plantation, in said county; but find necessary, in order to enable them to complete it, to procure certain supplies and certain monies for this said plantation. The said Summers and Brannins are willing and agree to advance said supplies to the extent of five thousand dollars, and in consideration thereof, and as an inducement thereto, the said R. M. and B. Butler agree and contract that said Summers and Brannins shall have an interest in said crop of cotton to the extent and number of bales, average weight when ginned and packed, and said R. M. and B. Butler further agree and bind themselves, in consideration of the premises, to ship the said Summers and Brannins at New Orleans, La., the said bales of cotton, as well all the balance of their said crop of cotton, and the said R. M. and B. Butler further agree and bind them-

selves to pay to the said Summers and Brannins 2½ per cent. commission for advancing and 10 per cent. interest thereon, until paid, and the usual commission for selling their said cotton.

In testimony whereof we have hereunto set our hands and seals this 19th day of February, A. D. 1867.

R. M. AND B. BUTLER.
SUMMERS AND BRANNINS.

Witness:
R. C. SMITH.
W. N. HENDERSON.

Filed July 1st, 1869. G. T. Swann, cl'k.

48 EXHIBIT "2."

(Copy.)

Messrs. R. M. and B. Butler in account current and interest account with Summers and Brannins, Feb'y 19, '68.

DR.

1867.					
Feb'y 2	To paid you				325 00
16	" freight per Lilly				9 50
"	" inv. sund's p'r Magenta				241 52
"	" draft fav. Louis Hoffman				85 15
"	" " " J. W. Roach				100 00
18	" " " do.				200 00
"	" " " W. Leonard & Bro's				1,890 00
23	" " " st'r Hope				125
25	" " " W. S. Wheeler				200
"	" " " W. Leonard & Bro's				200
	" " " Harrison & Hyatt				350
26	" inv. sund's per R. E. Lee				298 25
28	" stamps on mortgage				5
April 9	" inv. sund's from Louisville				377 15
19	" p'd Ja's Hazlitt, bill corn & oats				46 15
June 7	" p'd you				38
8	" inv. sund's p'r Indiana				252 45
					$4,743 17
June 8	To balance	256	17 06		240 09
" 19	" p'd st'r Hope	245	3 68		53 80
July 2	" inv. sund's p'r Quitman	232	4 25		66 47
3	" draft fav. Harrison & Hyatt	231	3 53		54 75
Aug't 7	" inv. sund's p'r Norman from Louisville	196	3 10		56 60
14	" " " " Empire " "	189	7 25		138 12
17	" p'd W. R. Green & Co., bill corn	186	1 29		24 59
20	" " Stewart & Mitchell for for'd'g & freight	183	91		17 50
30	" " " " " " "	173	10		2 25
Sept. 7	" freight on pork per Calumet	165	19		3 75
7	" inv. sund's per National	165	1 79		38 95
23	" freight " "	149	09		2 25
Oct. 18	" joint note due this day	124	86 13		2,500 00
Nov. 19	" " " " " "	93	64 56		2,500 00
28	" inv. sund's p'r Quitman	83	58		25 11
	Forward		194 51		$5,724 23
49					
1868.	To am't brought forward		194 51		$5,724 23
Jan'y 2	" p'd W. R. Green & Bro., charges on 4 b. c	48	76		57 33
Feb'y 19	" interest on above to date		195 27		
" "	" 2½ % commissions on balance, 4,658.24				195 27
					116 45
					6,093 28
1868.					
Feb'y 19	To balance				$4,774 69

CR.

1867.				
Feb'y 1	By proceeds of note due 15-18 Oct			$2,256 39
18	" " " " " 15-18 Nov			2,246 69
June 8	" balance			240 09
				4,743 17
1867.				
Nov. 29	By nett pro. 24 b. c	82	24 23	1,067 73
1868.				
Jan'y 2	" this am't from Hogan & Patton, proceeds 1 b. c	48	54	39 94
13	" nett pro. 4 b. c	37	1 89	184 16
			26 76	
				26 76
				$1,318 59
1868.				
Feb'y 19	By amount brought forward			$1,318 59
	" balance			4,774 69
				6,093 28

E. and O. E.
New Orleans, Feb'y 19, 1868.
(Signed)

SUMMERS AND BRANNINS.
P'r JOHN H. BRIGHT.

50 *Exhibit No. 3 to answer of Eugene Roach.*

(Copy.)

NEW ORLEANS, *March* 15, 1867.

Messrs. R. M. and B. BUTLER,
Jackson, Missi.:

GENT.: Your favor of rec'd, advising the return of protested draft for $50, from Vicksburg. The draft has been presented, also one for $80, and payment declined on both.

When your Mr. R. M. B. was in the city, a few days since, we showed him the state of the a/c, and that the order sent to Louisville for supplies would absorb the balance of cr., or within a few dollars. This invoice is not yet rec'd, and we cannot now report exactly.

As you understood, you were to draw for $5,000, instead of the proceeds of your notes for that am't, which was contrary to our custom. We said to you that later in the season this difference would be furnished to the plantation. You will please bear in mind a speciality of our agreement that you would draw for am'ts to pay for mules and some oxen; the balance was to be furnished by us in supplies; nearly all the am't has been absorbed in drafts.

We are, very truly,

SUMMERS AND BRANNINS.

It was also understood that this advance was not to be called for at once, but to be spread out over the season.

Filed July 1st, 1869. G. T. Swann, cl'k.

51 *Exhibit No. 4 to answer of Eugene Roach.*

NEW ORLEANS, 17th *Oct.*, 1867.

Messrs. R. M. and B. BUTLER,
Yazoo City:

DEAR SIR: We have your favor of 14th inst., and regret to learn that you have no cotton ready to send us. To-morrow your first note

for $2,500 falls due. We have had it discounted, and shall have to take it up ourselves, as you have not put us in funds. Money matters are very stringent, and we are forced to urge you to send us your cotton as soon as possible. There is a good demand for cotton at 15c. 20c. We see no prospect of prices being any better this season.

We are, very truly,

SUMMERS AND BRANNINS.
P'r R. C. SMITH.

Filed & ent'd July 1st, 1869. G. T. Swann, cl'k.

52 *Exhibit No 5, to Roach's answer.*

(Exhibit No, 5. Copy.)

Messrs. R. M. and B. Butler in account current and interest account with Summers and Brannins.

DR.

1868.				
Feb'y 19	To balance as per ac. rend	390	413 89	4,774 09
April 4	" stamp on deed trust	345	61	8 00
11	" inv. pork p'r Quitman	338	4 51	59 86
25	" p'd freight	324	22	3 00
May 11	" draft fav. Harrison & Hyatt	308	11 98	175 00
"	" freight	308	21	2 25
June 4	" telegram	284	13	2 70
8	" " from them	280	12	2 16
11	" draft favor st'r Calumet	277	6 16	100 00
25	" " " " "	263	2 51	43 20
27	" " " " "	261	2 84	48 50
"	" inv. sund's p'r Quitman	261	3 60	62 01
July 3	" d'ft fav. st'r Calumet	255	1 59	27 82
" 7	" telegram	251	00	1 50
10	" p'd d'ft Butler balance of 51$ left by him July 7, '68			49 5[illegible]
13	" freight	245	16	3 0[illegible]
20	" inv. sundries from Louisville	238	4 92	92 50
24	" d'ft fav. st'r Calumet	234	5 20	100 00
Aug't 32	" inv. osnaburgs	205	77	17 [illegible]
24	" d'ft fav. st'r Calumet	203	2 66	59 00
28	" " " E. G. Morse	199	5 28	119 73
Sept. 14	" " " Hiram Harrison, ag't	182	10 48	258 54
25	" " " W. H. Mangum	191	1 03	27 45
30	" " " st'r Calumet	166	1 25	33 93
Oct. 6	" inv. bagg. & pork	160	8 11	228 14
14	" p'd Brevoort Butler	152	3 38	100 00
15	" inv. whiskey	151	81	23 83
17	" " bagg. & pork	49	53	15 50
Nov. 3	" " pork	132	2 93	99 75
5	" p'd Brevoort Butler	130	87	30 00
19	" freights on pork	116	18	6 75
21	" p'd R. M. Butler	114	63	25 00
			497 56	$6,600 55
53 1868.				
Dec. 2	To am't brought forward		497 56	$6,600 55
18	" costs suit vs. Hogan & Patton	103	14	6 00
19	" p'd R. M. Butler	87	97	50 00
1	" bagging & ties furnished by H. & Wollfolf	86	75	39 00
	" att'y's fees p'd & Young $130			
	" bill p'd North & Hartigan 70. 86			
1869.	" justice & constable's fees 22. 22	104	5 15	223 08
Jan'y 8	" McMaster's expenses to Vicksburg	66	29	20 00
March 15				
			504 86	
				504 86
				$7,443 49
1869.				
March 15	To balance			$3,615 88

CR.

1868.				
July 7	By this am't rec'd from D. N. Butler	251	.....	51 00
Sept. 18	" nett proceeds 3 b. c.	178	11 75	297 23
Oct. 13	" " " 8 "	153	24 99	735 00
Nov. 2	" " " 15 "	138	40 44	1,368 33
Dec. 1	" " " 15 " sold at Vicksburg	104	29 55	1,269 52
1869.			106 53	
March 15	" int. on above to date			106 53
				$3,827 61
1869.				
March 15	By am't brought forward	.....	.....	$3,827 61
	" balance	.....	.....	3,615 88
				$7,443 49

E. & O. E.

NEW ORLEANS, *March* 15, 1869.

(Sig.) SUMMERS AND BRANNINS,
Per J. H. BRIGHT.

Endorsed: Exhibit No. 5, to Roach's answer. Filed July 1st, 1869. G. T. Swann, cl'k.

54 *Exhibit No. 6 to answer of Eugene Roach.*

(Copy.)

These articles of agreement, entered into this 22d day of December, A. D. 1866, between Eugene Roach, of the first part, and Robert Moore Butler and Brevoort Butler, of the second part, witnesseth: That the said Roach has this day leased, and to farm let, to the said Butlers, that tract of land, in Yazoo County, joining, and heretofore constituting a part of, Prairie plantation, called the "Spires place," which contains two hundred and fifty acres, and promises to assist, with an equal number of hands that said Butlers may employ for the purpose, to build the necessary number of cabins for laborers on said place; and said Butlers promise to pay said Roach for the use of said land, at the rate of eight dollars per acre, and to repair the fences at their own expense, and to redeliver possession thereof, to the said Roach, on the 1st day of January, A. D. 1868, and bind themselves to cultivate the same, in a careful and husband'like manner, according to the custom of the country.

Witness our hands—

(Signed) EUGENE ROACH.
" R. M. BUTLER.
" BREVOORT BUTLER.

(Signed) M. H. KEYS.

Filed July 1st, 1869. G. T. Swann, cl'k.

55 *Exhibit No. 7 to answer of Eugene Roach.*

(Copy.)

This indenture, made this 2d day of April, 1868, between R. M. and B. Butler, of Yazoo County, State of Mississippi, of the one part, J. J. B. Hilliard, trustee, of the second part, and Summers and Brannins, a commercial firm of the city of New Orleans, of the 3rd part, witnesseth: That whereas the said Summers and Brannins did advance to

the said R. M. and B. Butler, during the year 1867, a large amount of money, for the purpose of aiding them in making a crop of cotton, corn, &c., which advances were secured by the joint obligation of the said Butlers and of Eugene Roach and J. W. Roach, secured by mortgage on real estate; and whereas there was due, on the 19th day of February, 1868, a large balance to the said Summers and Brannins, to wit, the sum of forty-seven hundred and seventy-four $\frac{69}{100}$ dollars, which balance, together with ten per cent. interest since that date, is still due and unpaid; and, whereas it may be necessary, in order to enable said R. M. and B. Butler to cultivate another crop, that said Summers and Brannins should furnish them some further supplies:

Now, in order the further to secure said Summers and Brannins for the am't already due and unpaid, as aforesaid, as well as for any further advances that they may make on the crop growing and to be
56 grown the present year, together with interest, commissions, &c., as aforesaid, we, the said R. M. and B. Butler, do by these presents hereby transfer and convey to the said J. J. B. Hilliard, trustee, for the use and benefit of the said Summers and Brannins, all the crop of corn and cotton that may be grown the present year on the plantation we are now cultivating in the county and State aforesaid, hereby binding and obligating ourselves to ship the same, as soon as grown and ready for market, to the aforesaid firm of Summers and Brannins, the nett proceeds whereof, when sold, to be placed, first to the payment of any supplies furnished by them the present year, and the balance, if any, to be placed to the credit of the amount due from last year, as herein stated; and, in case of the failure or refusal of said R. M. and B. Butler to so ship and apply the crops aforesaid, as herein specified, the said J. J. B. Hilliard is hereby authorized, upon the request of Summers and Brannins, to seize said crops, and, after advertising them for ten days, in three or more public places in said Yazoo County, to sell the same for cash to the highest and best bidder, and, after payment of the expenses necessary to the execution of this trust, to apply the balance, if any, to the payment of the debt due and to become due said Summers and Brannins, as herein specified; and, in case said
57 Hilliard cannot act as trustee, as herein stipulated, the said Summers and Brannins may appoint, in writing, another trustee, who shall be fully empowered to act. This deed of trust is given as further and additional security, and is in no way to affect or invalidate the security already held by Summers and Brannins.

Given under our hands and seals the day and date above mentioned.
(Signed) R. M. AND B. BUTLER.

The within is a true copy of a lien on the crop of R. M. and B. Butler, May 1st, 1868.
(Signed) G. A. GIBBS, *Clerk.*

Filed, July 1st, 1869. G. T. Swann, cl'k.

And, on the 2nd day of July, 1869, came the defendants, R. M. and Brevoort Butler, by their attorneys, Johnston and Johnston, and filed their joint and several answer to the bill of complainant herein, which, with the exhibit filed therewith, is as follows, to wit:

THE UNITED STATES OF AMERICA,
Southern District of Mississippi :

In chancery.

The joint and several answer of R. M. and Brevoort Butler, two of the defendants to the bill of complaint exhibited against them and others, by Edwin H. Summers, John S. Brannins, Abraham Brannins, and H. D. Newcomb, partners, conducting business under the name and style of "Summers and Brannins," complainants.

58 These defendants, now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised is or are material or necessary for them, or either of them, to make answer unto, they, these defendants, severally answering, say:

They admit that they leased for the year 1867, from their codefendants, Eugene Roach and J. W. Roach, now deceased, a plantation in Yazoo County, for the purpose of planting cotton. They admit the execution and delivery of the joint notes of themselves and their said codefendants, for $2,500 each, and the execution and delivery of the mortgage securing the same. They now state and aver that the sole and only consideration for the said notes, as understood and agreed upon by the said Roach's, these respondents and complainants, was plantation supplies to be furnished to these respondents by complainants for the leased plantation for the year 1867, and in no event were the said Roach's to be liable for a greater amount of supplies than the face of said

59 notes.

The said Roach's were to be liable only for the supplies for the year 1867, not exceeding $5,000.00. The notes were simply given as security for said advances.

It was further agreed between the said parties that the crop of 1867 was to be shipped to said complainants, and the succeeding crops to be also shipped, and that all shipments were to be first applied as credits on the said notes. Respondents say that the whole amount furnished for the year 1867 was not exceeding $5,284.64. They insist that in no event can their codefendants, the said Roaches, be held liable for more than $5,000 of this sum. Respondents claim that the nett proceeds of the crop of 1867 was at least $1,291.83, as shown by complainants' accounts of sales. But respondents claim that this cotton was sold at prices far below the then market-value of the same, and that complainants acted either in bad faith, or failed to exercise ordinary skill and prudence in the disposition of the same; and that at all events the rights of the said Roach's should not be prejudiced by the sacrifice of this cotton.

Respondents admit that they executed and delivered to the said complainants the deed of trust, marked Exhibit "D," to the said bill. They state that the Roach's were no parties to that deed, and knew nothing of the same, and have never assented thereto, so far as these re-

60 spondents are advised. Respondents aver that, by the said deed of trust, and as a consideration therefor, the said complainants agreed and obligated themselves to furnish respondents with all necessary plantation supplies for the year 1868, to enable them to make a crop, and thereby meet their indebtedness. This promise of supplies

was the consideration which induced respondents to execute said deed. Respondents now aver that the said complainants failed and refused to carry out and fulfil their part of this contract. Instead of furnishing all the needful supplies, as promised, they only advanced in the year 1868, (before respondents shipped them cotton,) supplies to the amount of $927.47. Complainants, as early as May 13, 1868, refused to make promised advances, and refused at various times to honor dr'fts which was necessary in the planting operations. True it is, that after respondents, in fall of 1868, had shipped cotton to complainants, they forwarded some supplies, but respondents state that the whole amount furnished by complainants for the year 1868 did not exceed $1,668.73, which amount was grossly inadequate. Respondents were put to great trouble and inconvenience to raise the necessary amount of funds, by reason of complainants' default. They needed, in addition to the
61 above sum, about $2,000.00. Of this sum Harrison and Hyatt, agents for Messrs. T. H. and J. M. Allen & Co., advanced $850.00. Complainants, after first refusing in May, 1869, proposed to advance, through Messrs. Harrison and Hyatt, promising them preference in the lien on the crop. Complainants would only pay $250 to Harrison and Hyatt, after first protesting or refusing to pay a dr'ft for that amount for them. The remaining $600 of the sum of $850, Summers and Brannins refused to arrange, and these respondents were compelled to arrange it themselves, which they did by a sight dr'ft on Messrs Gerrard and Craig, of New Orleans.

Respondents, by their own exertions, succeeded in raising the further amount of about $1,100 from other sources. If respondents had relied on the advances of complainants, which were greatly inadequate, they would have entirely failed in their planting operations for the year 1868. Respondents insist that complainants are not entitled to any rights under the said deed, the consideration thereof having substantially failed, and that they have forfeited all equitable lien or claim to the said cotton or the proceeds thereof, in the hands of the receiver, by reason of having failed to perform their part of the agreement.

Respondents, in this connection, state that (5) bales of the fifteen (15) bales of cotton attached by Roach, were shipped by these re-
62 spondents to Messrs. T. H. and J. M. Allen & Co., in consideration of their having advanced the said sum of $600, and charged no interest thereon, for the purpose of giving them the commissions for selling the same; the nett proceeds were then to go to complainants. The remaining (10) ten bales were shipped to Gerrard and Craig to meet respondent's indebtedness to them for the said dr'fts, the proceeds of sale remaining after the payment of this debt to be applied to complainants' claim.

The said 15 bales attached and turned over to complainants, although sold at a sacrafice, netted $1,269.52.

Respondents deny that they acted in bad faith in making this shipment. They claim that, after complainants' default, they had a right to ship this cotton to the parties who had assisted them; more especially after Summers and Brannins, the complainants, had agreed to give to Harrison and Hyatt a preference in the lien.

Respondents further state that they shipped to complainants in 1868, of the crop of that year, (26) twenty-six " tied bales of cotton, which amounted to (32½) thirty-two and one half mercantile bales, averaging 400 lbs. per bale, amounting in all to (13,000 lbs.) thirteen thousand pounds. Ac'ording to complainants' accounts of sales, this weight fell short 800 lbs. Respondents insist that complainants be held accountable for

63 this deficit. They further state that the said complainants sacrificed this cotton. It was sold greatly below the market-price, and complainants either acted in bad faith or failed to use ordinary skill in the sale of the same. They claim that they should be allowed as a credit on their account with complainants for this cotton at least the sum of $3,250, in addition to the proceeds of the 15 bales turned over by Roach.

There are many inaccuracies and unauthorized charges in the said accounts of complainants. The expenses attending the attachment proceedings of Roach against the 15 bales of cotton charged in compl'ts' account are incorrect, as well as protest-fees charged on various d'fts which should have been honored.

After a reduction of these accounts to a fair and correct basis, and an allowance of all proper credits arising from shipments of cotton, (aside from matters hereafter set out in this answer,) there is not due complainants more than $. These respondents, however, claim that they are really not indebted in more than a very small sum, if at all, to the complainants. They aver that complainants are indebted to them in the sum of $1,480, for services rendered for complainants, and feed, care, medicines, &c., bestowed upon their mules, in accordance
64 with their request. Respondents now file their itemized account of services, marked Exhibit "A," and pray that the same be taken as part of this answer, and that in a statement of accounts the same be allowed them.

Respondents say further that they were damaged and put to great trouble by reason of compl'ts' breach of the contract for 1868, and that their credit was greatly injured by the repeated refusals of complainants to honor their drafts, and the protests consequent, which occurred repeatedly in 1867 and 1868. They claim damages therefor in sum of $.

They admit that the rent proceedings were commenced by Roach as stated in the bill, and that respondents replevied the same with Schaeffer as security, as stated. Respondents deny that any rent whatever is due to the said Roach's as set up in their answer. They claim an offset against said Roach's greater than the demand for rent. Respondents pray that your honor will permit them to bring in their offsets against said Roach's, if the latter are permitted to set up their claim for rent. Or, in the event it is decided that complainants have no rights to the fund in the receiver's hands, that your honor will, if you deem proper, refer the matters in controversy between the Roach's and these respond-
ents to the circuit court of Yazoo County, where the proceedings
65 for rent are pending. They pray that the complainants' accounts be reduced in the particulars named; that it be decreed that they have no lien under the deed of trust; and that an account be taken between respondents and Roach's or that matter be referred as aforesaid. Respondents deny all the allegations of bad faith charged in the said bill, and having fully answered, pray to be hence dismissed, &c., &c.

R. M. AND B. BUTLER,
By JOHNSTON AND JOHNSTON, *Sol'rs.*

THE UNITED STATES OF AMERICA,
Southern District of Mississippi :

Personally appeared before me, Geo. A. Smythe, U. S. com'r for said dist., the above-named R. M. Butler, who, being by me duly sworn, says that the matters and things stated in the foregoing answer as true are

true to the best of his knowledge and belief; and those stated on information and belief he verily believes to be true.

R. M. BUTLER.

Sworn to and subscribed before me this the 2d July, 1869.

GEO. A. SMYTHE,
U. S. Commissioner.

Filed & ent'd July 2d, 1869. G. T. Swann, cl'k.

(For Exhibit "A" to foregoing answer, see next page.—*Cl'k.*)

66 *Exhibit "A" to answer of R. M. and B. Butler.*

Summers and Brannins to R. M. and B. Butler, Dr.

1868.			
Jan'y	9th.	For services rendered on a/c Col. E. P. Jones.....	$150 00
"	23rd.	" services rendered on a/c C. J. Ingersoll.....	200 00
		" feed & care 7 mules for 3 months, @ 4s per day	315 00
		" p'd for medicines for 4 mules & care of same while sick with "charbone".....	50 00
1869.			
June	1st.	" care 2 mules 8 mont's, @ $15.00.....	240 00
"	1st.	" medicine & care of 1 mule, (since dead).....	10 00
July	1st.	" care of 1 mule 1 month.....	15 00
"	1st.	" additional services during 18 months.....	500 00
			$1,480 00

E. & O. E. Jackson, Miss., July 1st, 1869.

R. M. & B. BUTLER.

Filed & ent'd July 2d, 1869. G. T. Swann, cl'k.

And on the 2nd day of August, 1869, the complainants, by their solicitors, Messrs. Yerger, filed their replication to the answers of R. M. and B. Butler and Eugene Roach as follows, to wit:

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET ALS. } N. S. 81. In equity.

Complainants, for replication to the several answers of the defendants Eugene Roach & R. M. and B. Butler, replies and says that the statements and allegations of said defendants are not true as therein set forth and alleged; and that the statements and allegations in their bill
67 are true as therein set forth and alleged; and this they are ready to establish and prove as the court shall direct.

YERGERS,
Sol's for Compl'ts.

Filed & ent'd Aug. 2d, 1869.

G. T. SWANN, *Cl'k.*

(And on the 2nd day of August 1869, a pluries subpœna was issued, which does not appear to have been returned. *Cl'k.*)

And afterwards, to wit, at rules held before the clerk of said court, at the court-room thereof, on the 2nd day of August, A. D. 1869, the following pro confesso was entered in this cause; also an order appointing guardian a' litem for minor, to wit:

At rules, Aug. 2nd, 1869.

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET ALS. } N. S. 81. In equity.

It appearing that the defendant Emile Schaeffer has failed to answer the bill of complaint herein within the time prescribed by the court, on motion of complainants, by their solicitors, it is ordered that the said bill of complaint as to the said Emile Schaeffer, defendant therein, be, and the same is hereby, taken for confessed and admitted to be true,
68 and that as to him this cause do proceed ex parte.

And on the further motion of complainants, and it appearing that the process herein has been duly served on the minor defendant, Naylor Roach, it is further ordered that Archy McGehee be, and he is hereby, appointed guardian ad litem of said minor defendant, Naylor Roach, and that he appear, &c., according to the rules of this court in this behalf.

GEO. T. SWANN, *Clk.*

Ent'd Aug't 2d, '69.

GEO. T. SWANN, *Clk.*

And on the 6th day of September, A. D. 1869, the answer of the defendant Naylor Roach, by his guardian ad litem, Archy McGehee, was filed in this cause as follows, to wit:

Circuit court United States, southern district of Mississippi, to Nov. term.

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET AL. } 81.

Answer of Naylor Roach, a minor, by Archy McGehee, guardian ad litem.

Defendant Naylor Roach, a minor, by his guardian ad litem, Archy McGehee, answering says, that of the matters and charges in the bill of plaintiffs contained he knows nothing, and neither admits nor denies the statements therein, but requires strict proof of all the same so far as his interests are concerned.

NAYLOR ROACH, *Minor.*
P'r A. McGEHEE,
Guardian ad litem.

Filed & ent'd Sept. 6, 1869.

GEO. T. SWANN, *Clk.*.

69 On the 9th day of Nov., 1869, complainants, by solicitors, filed their replication to the answer of A. McGehee, guardian at litem of Naylor Roach, minor, as follows, to wit:

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET AL. } N. S. 81. In equity.

Complainants, for replication to the answer of the defendant Naylor Roach, by A. McGehee, guardian ad litem, reply and say that the statements and allegations of said defendant are not true as therein set forth and alleged; and that the statements and allegations in their bill are true as therein set forth and alleged; and this they are ready to establish and prove as the court shall direct.

YERGERS,
Sol's for Compl'ts.

Filed Nov. 9, 1869.

GEO. T. SWANN, *Clk.*

And afterwards, to wit, on the 16th day of February, 1870, it being a day in the term of said circuit court begun and held at Jackson, on the 4th Monday and 24th day of January, A. D. 1870, the following order was made in this cause, to wit:

SUMMERS AND BRANNINS *vs.* E. ROACH ET AL. } In ch'y. N. S. 81.

It is ordered by the court that the money now in the
70 hands of Joshua Green, receiver herein, be paid over to complainants, upon the execution of a bond by E. H. Summers, one of the complainants, with William B. Taylor or James R. Yerger as his surety, in the penalty of two thousand dollars, conditioned that he will repay into court the said sum of money, together with interest thereon at 8 p'r cent. from date of said bond, or such part as he may be required to pay on the final hearing of this cause, in the event a decree should be rendered against complainants requiring said sum of money or any part thereof to be repaid into court, for the use of the said defendants or either of them.

And on the 16th day of February, 1870, pursuant to the foregoing order, the following bond of said E. H. Summers was filed in this cause, to wit:

Know all men by these presents that we, E. H. Summers and James R. Yerger, are held and firmly bound unto the honorable Robert A. Hill, district judge, &c., and his successors in office, in the penal sum of two thousand dollars; for which payment we bind ourselves, our heirs, &c., jointly & severally, firmly by these presents.

The condition of the above obligation is this: whereas an order was made on the 16th day of February, in the year 1870, in the case of Summers and Brannins vs. Eugene Roach et als., No. N. S. 81, in
71 ch'y, in the circuit court of the United States for the southern district of Mississippi, that the money now in the hands of Joshua Green, the receiver in said cause, shall be paid to Summers and Brannins, the complainants therein, upon the execution of this bond:

Now, if the said Summers & Brannins shall repay the said sum of money, together with interest thereon at 8 per cent. per ann. from this date, into said court, or such part thereof as they may be required to pay in the event on the final hearing of said cause, a decree should be ren-

dered against complainants requiring said sum of money or any part thereof to be repaid into court for the use of the said defendants or either of them.

E. H. SUMMERS, [SEAL.]
By W. YERGER. [SEAL.]
JAMES R. YERGER. [SEAL.]

[Internal revenue stamps.]

Filed Feb'y 16, 1870.

G. T. SWANN, *Clk.*

At a special term of said court, begun & held on the 1st Monday, & 4th day of July, 1870, & on the 16th July, 1870, a day of said term, the following order was made in this cause, to wit:

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } N. S. 81.

Ordered, on motion, that time be extended to the parties, complainants and defendants, to take depositions and proofs herein, to the 4th Monday in October next.

72 On the 2d day of November, 1870, the complainants filed an order setting this cause for hearing, which was entered on the hearing docket of said court as follows, to wit:

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } N. S. 81. In equity.

Set this cause for hearing.

YERGERS,
Sol's for Complainants.

Filed & entered on hearing docket, Nov. 2d, 1870.

G. T. SWANN, *Clk.*

73 On the final hearing of this cause in said circuit court of the United States in and for the southern district of Mississippi, the following testimony was read in behalf of the complainants herein, to wit:

Deposition of John H. Bright.

UNITED STATES OF AMERICA,
State of Louisiana, District of Louisiana,
Parish of Orleans, City of Orleans:

Be it remembered that, on this twenty-fourth day of September, in the year A. D. 1869, I, Andrew Hero, a duly appointed and qualified notary public in and for the parish of Orleans, State of Louisiana, authorized to take affidavits and acknowledgments of bail, &c., caused to come before me at my office in New Orleans, La., to be examined as a witness, de bene esse, John H. Bright, a witness in behalf of the complainants in a suit pending at Jackson, Mississippi, in the circuit court of the United States for the southern district of Mississippi, wherein Summers and

Brannins are plaintiffs, and Eugene Roach et als. are defendants, being No. 81, N. S., in ch'y, and the said examination was taken by me, de bene esse, because the said John H. Bright, the witness, resided at New Orleans, Louisiana, more than one hundred miles from Jackson, Mississippi, the place where the court in which said suit is pending and
74 to be tried is appointed by law to be held; and no notification was given to defendants, or either of them, the adverse parties, of the time and place appointed for taking said deposition, to be present at the taking of the same and to put interrogatories if they saw fit, because the said defendants, or neither of them, were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption, to whom such notification could be given; and I therefore proceeded with said examination; and the said John H. Bright, the witness, being carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I am the book-keeper of Summers and Brannins, and am of full age. I opened the a/c of the Butlers on the books of Summers and Brannins, and have made all the entries on the original and other books of entry of said firm. The Exhibits "E" and "F" referred and attached to the deposition herein of E. H. Summers, are correct transcripts from the books of Summers and Brannins, and are just and true in every particular; all charges being correct and all credits have been made and allowed therein. The notes, marked "A" and "B," referred and attached to said Summers' deposition herein, are the property of complainants, and there is now due and owing thereon by the several drawers,
75 jointly and in solido, the sum of three thousand six hundred and nineteen $\frac{38}{100}$ dollars, with eight % interest from March 15, 1869, which is the balance shown to be due by said Exhibit "F." E. Roach, one of the drawers, was at the office of complainants in this city in the fall or winter of 1868, in reference to cotton that the Butlers had attempted to divert from the firm, and he acknowledged his liability for the balance on said notes, in my presence. The Exhibits "G" and "H," now shown to me and attached to Mr. Summers' deposition, are correct in every particular, and give a full statement of all cotton received and sold as specified in said Exhibits "E" and "F."

JOHN H. BRIGHT.

And I do further certify that the preceding deposition was reduced to writing by me and signed by the said John H. Bright before me, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

As witness my hand and seal.

[L. S.] ANDREW HERO, JR., *Not. Pub.*

Deposition of Edwin H. Summers.

UNITED STATES OF AMERICA,
State of Louisiana, District of Louisiana,
Parish of Orleans, City of New Orleans:

76 Be it remembered that, on this twenty-fourth day of September, in the year 1869, I, Andrew Hero, jr., a duly appointed and qualified notary public in and for the parish of Orleans, State of Louisiana, authorized to take affidavits and acknowledgments of bail, &c., caused to come before me at my office in New Orleans, La., to be examined as a witness, de bene esse, Edwin H. Summers, a witness in be-

half of the complainants, in a suit pending at Jackson, Miss., in the circuit court of the United States for the southern district of Mississippi, in equity, wherein Summers and Brannins are plaintiffs, and Eugene Roach et al. are defendants, being No. 81., N. S., in ch'y; and the said examination was taken by me, de bene esse, because the said Summers, the witness, resided at New Orleans, Louisiana, more than one hundred miles from Jackson, Miss., the place where the court in which said suit is pending and to be tried is appointed by law to be held; and no notification was given to defendants, the adverse party, of the time and place for taking said deposition, to be present at the taking of the same, and to put interrogatories, if they saw fit, because the said defendants or neither of them were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption, to whom such notification could be given; and

I therefore proceeded with said examination; and the said Edwin
77 H. Summers, the witness, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I am one of the members of the firm of Summers and Brannins. The notes, marked respectively "A" and "B," which I hereto annex, and make part of my deposition herein, being each for twenty-five hundred dollars, drawn by R. M. Butler, Brevoort Butler, J. W. Roach, and E. Roach, jointly and severally, or the order of Summers and Brannins, dated first of February, eighteen hundred and sixty-seven, at New Orleans, Louisiana, and payable on the fifteenth of October and November, respectively, after date, at the Canal Bank, in New Orleans, with eight per cent. per annum interest after maturity until paid, were given by said drawers for advances being then made and to be made by Summers and Brannin to R. M. and B. Butler, to enable said Butlers to purchase mules and supplies to cultivate a plantation which they had leased from J. W. and E. Roach. Summers and Brannins would not make advances or pay drafts of the Butlers without their joint and several notes signed with the Roach's, and such notes to be secured by a mortgage or deed of trust on the property or plantation which belonged to the Roach's. I do not know that the Roach's were interested other than as above, and in thus securing a tenant for their

property, and the tenants, viz, the Butlers, making valuable
78 improvements or betterments thereon, which, I understood, they, the Butlers, agreed to do. Thes notes are the identical ones specified in and secured by the mortgage hereto annexed as Exhibit C, and made part of my deposition, which said J. W. and Eugene Roach executed in favor of Summers and Brannins, under date of the twelfth of February, eighteen hundred and sixty-seven, duly recorded in Book X of the records of deeds of Yazoo County, Miss., pages 336, 337, and 338. At the close of the Butlers' a/c for the year eighteen hundred and sixty-seven, which was due on or about the nineteenth day of February, eighteen hundred and sixty-eight, there was then due and owing on account of said notes the sum of four thousand seven hundred and seventy-four $\frac{69}{100}$ dollars, and I hereto annex and make part of my deposition, as Exhibit "E," a copy of said account current, which is correct in every particular, and correctly made out from the books of my firm.

The Butlers had made a very small crop in eighteen hundred and sixty-seven, and having no means to continue their planting operations, Summers and Brannins, upon being applied to, agreed to continue to make further advances to enable them to plant another crop, provided, that they, the Butlers, would give plaintiffs, as additional security, a

mortgage or deed of trust on the crop to be grown; hence, the
79 Butlers, assenting to this proposition, executed in favor of plaintiffs the annexed mortgage or deed of trust, marked Exhibit "D," which I also make part of my deposition. In the Exhibits "D," they acknowledge the balance of forty-seven hundred and seventy-four $\frac{69}{100}$ dollars, to be due and owing to Summers and Brannins, with interest. This Exhibit "D" was executed by them and delivered to us, and thereupon Summers and Brannins continued advances for the year eighteen hundred and sixty-eight. At the close of the account of that year's business, which was done about the 15th of March, eighteen hundred and sixty-nine, there remained due and owing to Summers and Brannins, on account of said mortgage notes, "A" and "B," the sum of three thousand six hundred and fifteen $\frac{88}{100}$ dollars, after all deductions, credits, and offsets had been made and given. I hereto annex and make part of my deposition, as Exhibit "F," a copy of said account, which is correct in every particular, and correctly made out from the books of Summers and Brannins. Since the closing of said account a further expenditure of three $\frac{50}{100}$ dollars, as shown thereon, has been made for a/c of def'ts by pl'ffs. I hereto also annex and make part of my deposition as Exhibit "G," a statement of all the cotton received by Summers and
Brannins from or for a/c of R. M. and B. Butler, or any other per-
80 son or persons, in the years 1867 and 1868, and since, on account of the aforesaid mortgage notes; as also the annexed Exhibits "H," being copies of account sales, and these fully detail all cotton received, when, from what source, and amounts realized therefrom, and when sold, &c., and each and all the proceeds of such sales have been credited and allowed in the aforesaid Exhibits "E" and "F."

About the first of November, eighteen hundred and sixty-eight, the Butlers attempted to divert a portion of their crop of cotton from the house of Summers and Brannins, and did consign fifteen bales thereof to some other house, which fifteen bales were attached by E. Roach, one of the drawers of said notes, at Vicksburg, Missi., where it was sold, and, less costs, expenses, &c., netted twelve hundred and sixty-nine $\frac{52}{100}$ dollars, which amount was remitted to Summers and Brannins by Roach, and was allowed and credited to said Butlers, as per said Exhibit "F." Roach afterwards seized ten (10) bales of cotton and other property on the plantation occupied by the Butlers, but the same, at least the cotton, was bonded by the Butlers, and Summers and Brannins have never received any benefit therefrom.

The amount now due and owing by all of said parties on the said notes "A" and "B," is the balance shown and detailed in said Exhibit
"F," viz: Three thousand six hundred and fifteen $\frac{88}{100}$ dollars,
81 also, three $\frac{50}{100}$ dollars with interest at the rate of eight per cent. per annum, & costs, &c., on which all deductions, credits, and offsets have been made and allowed.

E. H. SUMMERS.

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the said Edwin H. Summers, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

As witness my hand and seal at New Orleans, this 24th September, A. D. 1869.

[L. S.] ANDREW HERO, JR.,
Not. Pub.

[Stamp.]

Exhibit "A," to the foregoing deposition, is as follows:

$2,500.] NEW ORLEANS, *February 1st*, 1867.

On the fifteenth day of Oct., after date, we or either of us promise to pay to the order of Summers and Brannins twenty-five hundred dollars, value received, with interest at the rate of eight per ct. per annum from maturity until paid, payable at the Canal Bank of New Orleans.

This note is given for supplies.

R. M. BUTLER.
BREVOORT BUTLER.
J. W. ROACH.
E. ROACH.

Exhibit "B," to said deposition, is as follows, to wit:

$2,500.] NEW ORLEANS, *February 1st*, 1867.

On the fifteenth day of Nov'r, after date, we or either of us
82 promise to pay to the order of Summers and Brannins twenty-five hundred dollars, value received, with interest at the rate of eight per c't per annum, from maturity until paid. Payable at the Canal Bank of N. O. This note is given for supplies.

R. M. BUTLER.
BREVOORT BUTLER.
J. W. ROACH.
E. ROACH.

Exhibit C, to said deposition, is as follows:

"C."

This indenture, made and entered into this the 12th day of February, A. D. 1867, by and between J. W. Roach and Eugene Roach, parties of the first part, of the county of Warren and State of Mississippi, and E. H. Summers, A. O. Brannin, J. S. Brannin, and H. D. Newcomb, of the city and parish of New Orleans, State of Louisiana, parties of the second part, witnesseth: That, for and in consideration of the sum of five thousand dollars to the parties of the first part paid by the parties of the second part, in hand, the receipt of which is hereby acknowledged before the signing, sealing, and delivering of these presents, the parties of the first part hereby grant, bargain, sell, alienate, and convey unto the parties of the second part the following-described land and premises, to wit, situated, lying, and being in the county of
83 Yazoo and State of Mississippi, and known as lots No. one (1) and No. two, (2,) in the division of the lands of Harry Oneal, deceased, and more particularly described as follows, viz: Lot No. one, (1,) commencing at a stake the northeast corner of the dower of Nancy Oneal; from thence along the north boundary of said dower forty chains and fourteen links to a stake; thence north thirteen chains and eighty-seven links to a stake; thence east forty chains and fourteen links to a stake; thence due south thirteen chains and eighty-seven links to the beginning. This share is lying and being the north end of the east half of the southeast quarter of section two, in township ten, range three west, containing fifty-five and $\frac{67}{100}$ acres. Lot No. two is bounded as follows: Beginning at a stake the northeast corner of share No. one; from thence due west along the north boundary of said share No. one, in part, sixty chains and twenty-one links to a stake, the half-section post in line between section two and three, township ten, range three west; from thence due north along said section-line twelve chains and thirteen links to stake; from thence due east sixty chains

and twenty-one links to stake; from thence due south twelve chains and thirteen links to the beginning, lying and being the south end of the west half of the northeast quarter of section two, in township ten, range three west, and south end of the northwest quarter of
84 section two, township ten, range three west, containing seventy-three and $\frac{63}{100}$ acres.

Also, three undivided three-fifths of the lands allotted and set apart to Nancy Oneal for her dower in the lands of said Harry Oneal, described as follows, to wit: Beginning at a stake in the line between section two and eleven, in township ten, range three west; from thence due north twenty-four chains and seventy-seven links to a stake; thence due west forty chains and fourteen links to a stake; thence due south twenty-four chains and seventy-seven links to a stake in the aforesaid section-line; from thence due east along said section-line to the beginning, being on the south end of the west half of the southeast quarter of section two, in township ten, range three west, and the east half of the southeast quarter of section two, in township ten, range three west.

Also, those lands embraced in the field-notes or survey of the lands belonging to Harry Oneal, on file in the office of the probate clerk of Yazoo County, State of Mississippi, which were allotted to Elizabeth O'Neal, being share No. three (3) of said survey, together with two-fifths of the interest in said survey, allotted to Nancy O'Neal for dower, all being in township No. ten, of range three west, and believed to be situated chiefly in the northwest fourth and west half of northeast fourth, and west half of southeast fourth of section
85 two, in the above township and range; and east half of southwest quarter or fourth in same section: To have and to hold to the parties of the second part, their heirs and assigns, forever in fee-simple; together with all and singular the premises, rights, ways, privileges, tenements, and hereditaments thereunto belonging or in anywise appertaining. And the parties of the first part hereby warrant, and will forever warrant, and their heirs, executors, or administrators shall forever warrant and defend the title to the above-described land and premises against the claim or claims of any and all persons whomsoever, both at law and in equity.

The condition of the above obligation is such that whereas the said J. W. Roach and Eugene Roach, parties of the first part hereto, and R. M. Butler and Brevoort Butler executed their certain promissory note in New Orleans, Louisiana, dated Feb. 1st, A. D. 1867, to Summers and Brannins, payable on the fifth of November after date for the sum of twenty-five hundred dollars, value rec'd, with interest at eight per cent. per annum from maturity until paid, and one note having been executed by the same parties on the same date, payable to the firm of Summers and Brannins for the like sum of twenty-five hundred dollars, due the fifteenth day of October after date for value rec'd, with interest at eight per cent. per annum from maturity until paid: Now,
86 therefore, if the said parties of the first part shall pay to the parties of the second part or cause to be paid to them, their heirs, executors, assigns, &c., the amounts specified in said promissory notes mentioned, together with the interests accruing thereon at the time and upon the conditions specified therein, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto set our hands and seals this the day and date first above written.

J. W. ROACH. [SEAL.]
E. ROACH. [SEAL.]

[Int. revenue stamps.]

STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me Warren Cowan, judge of the probate court of Warren County, J. W. Roach and Eugene Roach, who signed the above instrument of writing, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their proper act and deed for the purposes therein set forth and specified.

In testimony whereof I have hereunto set my hand and seal this the 12th day of February, A. D. 1867.

WARREN COWAN, [SEAL.]
Judge of Probate Court, Warren County.

STATE OF MISSISSIPPI,
Yazoo County, sct:

I, M. A. Jenkins, clerk of the probate court of said county,
87 certify that the instrument of writing to which this certificate is attached, from J. W. and E. Roach to Summers and Brannins, was filed in my said office for record on the 2 day of March, 1867, and that the same has this day been duly made of record therein in Book X, of the record of deeds, etc., of said county, on pages 336, 337, and 338.

Given under my hand and seal of said court, at Yazoo City, this 2 day of March, eighteen hundred and sixty-seven.

[L. S.] M. A. JENKINS, *Clerk.*

Exhibit "D" to said deposition is as follows:

"D."

This indenture, made the 2nd day of April, 1868, between R. M. and B. Butler, of Yazoo County, State of Mississippi, of the one part, J. J. B. Hilliard, trustee, of the second part, and Summers and Brannins, a commercial firm of the city of New Orleans, of the third part, witnesseth: That whereas the said Summers and Brannins did advance to the said R. M. and B. Butler during the year 1867 a large amount of money for the purpose of aiding them in making a crop of cotton, corn, &c., which advances were secured by the joint obligation of the said Butlers and of Eugene Roach and J. W. Roach, secured by mortgage on real estate; and whereas there was due on the 19th of
88 Feb'y, 1868, a large balance to said Summers and Brannins, to wit, the sum of forty-seven hundred and seventy-four $\frac{69}{100}$ dollars, which balance, together with ten per cent. interest since that date, is still due and unpaid; and whereas it may be necessary in order to enable said R. M. and B. Butler to cultivate another crop that said Summers and Brannins should furnish them some further supplies: Now, in order the further to secure said Summers and Brannins for the amount already due and unpaid as aforesaid, as well as for any further advance that they may make on the crop growing and to be grown the present year, together with interest, commissions, &c., as aforesaid: We, the said R. M. and B. Butler, do by these presents hereby transfer and convey to said J. J. B. Hilliard, trustee, for the use and benefit of said Summers and Brannins, all the crops of corn and cotton that may

be grown the present year on the plantation we are now cultivating, in the county and State aforesaid; hereby binding and obligating ourselves to ship the same as soon as grown and ready for market to the aforesaid firm of Summers and Brannins; the nett proceeds thereof, when sold, to be placed, first to the payment of any supplies furnished by them the present year, and the balance, if any, to be placed to the credit of the amount due from last year as herein stated. And
89 in case of the failure or refusal of said R. M. and B. Butler to so ship and apply the crops aforesaid as herein specified, the said J. J. B. Hilliard is hereby authorized, upon the request of Summers and Brannins, to seize said crops, and after advertising them for ten days in three or more public places in said Yazoo County, to sell the same for cash to the highest and best bidder; and after the payment of the expenses necessary to the execution of this trust, to apply the balance, if any, to the payment of the debt due and to become due said Summers and Brannins as herein specified. And in case said Hilliard cannot act as trustee as herein stipulated, the said Summers and Brannins may appoint in writing another trustee, who shall be fully empowered to act.

This deed of trust is given as further and additional security, and is in no way to affect or invalidate the security already held by said Summers and Brannins.

Given under our hands and seals the day and date above mentioned.

R. M. AND B. BUTLER.

[Int. rev. stamps.]

STATE OF MISSISSIPPI,
Yazoo County:

This day personally appeared before me, Geo. A. Gibbs, circuit clerk in in and for the county and State aforesaid, R. M. Butler, who acknowledged that he signed, sealed, and delivered the within instru-
90 ment of writing as his lawful act and deed, and on behalf of the firm of R. M. and B. Butler, and for the purposes therein specified.

Witness my hand and seal of said court this 1st day of May, 1868.

[L. S.] G. A. GIBBS, *Clk.*

91

EXHIBIT E.

Messrs. R. M. and B. Butler in account current and interest account with Summers and Brannins, Feb'y 19, 1868.

DR.

1867.				
Feb'y 2	To paid you			325 00
16	" inv. p'r Lilly			9 50
"	" inv. sund's p'r Magenta			241 52
"	" d'ft favor Louis Hoffman			85 15
"	" " " J. W. Roach			100 00
18	" " " "			200 00
"	" " " W. Leonard & Bro			1,890 00
23	" " " st'r Hope			125 00
25	" " " W. S. Wheeler			200 00
"	" " " Harrison & Hyatt			350 00
"	" " " W. Leonard & Bro			200 00
26	" inv. sund's p'r R. E. Lee			298 25
28	" stamps on mortgage			5 00
Ap. 9	" inv. sund's from Louisville			377 15
19	" p'd James Hazlett's bill—corn & oats			46 15
June 7	" " you			38 00
8	" inv. sund's p'r Indiana			252 45
				4,743 17
1867.				
June 8	To balances, as per above account	256	17 06	240 09
" 19	" p'd st'r Hope	245	3 68	53 80
July 2	" inv. sund's p'r Quitman	232	4 25	66 47
3	" d'ft favor Harrison & Hyatt	231	3 53	54 75
Aug. 7	" inv. sund's p'r Norman from L'v'lle	196	3 10	56 60
" 14	" " " " Empire " "	189	7 25	138 12
17	" p'd W. R. Green & Co. bill—corn	186	1 29	24 59
20	" Stewart & Mitchell for for'd'g & fr't	183	91	17 50
30	" " " " " "	173	10	2 25
Sept. 7	" freight on pork p'r Crescent	165	19	3 75
"	" inv. sund's, p'r National	165	1 79	38 95
23	" freight, p'r "	149	09	2 25
Oct. 18	" joint note due this day	124	86 13	2,500 00
Nov. 18	" " " " " "	93	64 56	2,500 00
28	" inv. sund's. p'r Quitman	83	58	25 11
	Am' brought forward		194 51	5,724 23
92 1868.	To am't bro't forward		194 51	$5,724 51
Jan'y 2	" p'd W. R. Green & Bro's, charges on 4 b|c	48	76	57 33
Feb'y 19	" interest on above to date		195 27	195 27
" "	" 2½ p. c. commissions on balance, 4,658.24			116 45
				6,093 28
1868.				
Feb'y 19	To balance			$4,774 69

CR.

1867.				
Feb'y 1	By proceed of note due 15-18 Oct'r			2,256 39
18	" " " " " 15-18 Nov'r			2,246 69
June 18	" balance			240 09
				4,743 17
1867.				
Nov'r 29	By nett proceeds, 24 b|c	82	24 33	1,067 73
1868.				
Jan'y 2	" this am't from Hogan & Patton, proceed., 1 b|c	48	54	39 94
13	" Nett pro., 4 b|c	37	1 89	184 16
Feb'y 19	" interest on above to date		26 76	26 76
	Am't bro't forward			1,318 59
1868.	By am't bro't forward			$1,318 59
Feb'y 19	" balance			4,774 69
				6,093 28

E. and O. E.

NEW ORLEANS, *Feb'y* 19, 1868.

93

EXHIBIT F.

Messrs. R. M. and B. Butler in account current and interest acc't with Summers and Brannins.

DR.

1868.						
Feb'y	19	To balance as per account rendered		390	413 89	4,774 69
April	4	" stamps on deed of trust		345	6	8 00
	11	" inv. pork per Quitman		338	4 51	59 86
	25	" p'd freight " "		324	22	3 00
May	11	" d'ft fa'or Harrison & Hyatt		308	11 98	178 00
"	"	" freight		308	21	2 25
June	4	" telegram		284	13	2 70
	8	" " from them		280	12	2 16
	11	" d'ft fav'r st'r Calumet		277	6 16	100 00
	25	" " " " "		263	2 51	43 20
	27	" " " " "		261	2 84	48 50
	"	" inv. sundr's, p'r Quitman		261	3 60	62 01
July	1	" d'ft fav'r st'r Calumet		255	1 59	27 82
	1	" telegram		251	10	1 50
	10	" p'd D. N. Butler balance of 51$ left by him July 7, '68				49 50
	13	" freight		245	16	3 00
	20	" inv. sund's, from Louisville		238	4 92	92 50
	24	" d'ft favor st'r Calumet		234	5 20	100 00
Aug.	22	" inv. osnaburgs		205	77	17 24
	24	" d'ft favor st'r Calumet		203	2 66	59 00
	28	" " " E. G. Morse		199	5 28	119 73
Sept.	14	" " " Hiram Harrison, ag'ts		182	10 48	258 54
	25	" " " W. H. Mangum		171	1 03	27 45
	30	" " " st'r Calumet		166	1 25	33 93
Oct.	6	" inv, bagg. & pork		160	8 11	228 14
	14	" p'd Brevoort Butler		152	3 38	100 00
	15	" inv. whiskey		151	81	23 83
	17	" " bagg. & pork		149	53	15 50
Nov.	3	" " pork		132	2 93	99 75
	5	" p'd Brevoort Butler		130	87	30 00
	19	" freight on pork		116	18	6 75
	21	" p'd R. M. Butler		114	63	25 00
Dec.	2	" costs suit vs. Hogan & Patton		103	14	6 00
94	18	To p'd R. M. Butler		87	97	50 00
	19	" bagging—this furnished by Hazlett & W		86	75	39 0
	"	" att'ys fees p'd Simrall & Young	$1 30			
		" bill paid North & Hartigan	70 86			
		" justices & constables' fees	22 22	104	5 15	223 0
1869.						
Jan'y	8	" McMaster's expenses to Vicksburg		66	29	20 00
March	15	" interest on above to date			504 86	504 86
						$7,443 49
1869.						
March	15	To balance				$3,615 88
July	8	" sheriff's costs in suit vs. Hogan & Patton				3 50

CR.

1868.					
July	7	By this am't rec'd from D. N. Butler	251	.....	51 00
Sept.	18	" nett pro. 3 b. c	178	11 75	297 23
Oct.	13	" " " 8 "	153	24 99	735 00
Nov.	2	" " " 15 "	133	40 44	1,368 33
Dec.	1	" " " 15 " sold at Vicksb'g	104	29 35	1,269 52
1869.					
March	15	" inter. on above to date		106 53	106 53
		" balance			3,615 88
					7,443 49

SUMMERS AND BRANNINS.
P'r JOHN H. BRIGHT.

E. and O. E.
NEW ORLEANS, *March* 15, 1869.

95 Exhibit G to said deposition of E. H. Summers is as follows, to wit:

Mr. McD. Verndon to Thomas Coubry, const., Dr.

For 10 bales cotton R. M. & B. B., 430, 409,
400, 395, 415, 380, 412, 420, 390, 390=4,052 lbs.

For 5 bales cotton (H) (H), 414, 339,
370, 414, 417.....=1,954

6,006 lb, 21 3/16 c, $1,272 52

CHARGES.

Cash paid for weighing, 3.00..... 3 00

Nett proceeds, dollars..... $1,269 52

(State tax paid)
V'burg, Miss., 1st December, 1868.
Received payment,

Constable's fees.....	$3 50,	squire.
" "	15 72,	constable.
	3 00,	writ.
	$22 22	
Simrall and Young.....	129 95	
	$130 00	

Cotton statement of R. M and B. Butler.

1867.			
Nov. 23.	P'r Magenta.....	15	(H)
" " "	"	9	
1868.			
Jan'y 2.	From Hogan & Patton.....	1	(S) (S)
" " "	do.	3	(B) (B)
Sept. 14.	" R. E. Lee	3	R.M. & B.B.
Oct. 5.	" do.	8	do.
" 26.	" do.	15	do.
		54	b. c.

96 Exhibit H to foregoing deposition of E. H. Summers is as follows, to wit:

H.

Account sales 9 bales cotton by Summers and Brannins, received per Magenta Nov. 23, 1867, for account of R. M. and B. Butler.

Nov. 26. Sold to N. B. Keene:

(S) 9—440, 425, 428, 455, 433, 424, 403, 403, 467=3,878.

9 bales cotton, weighing 3,878, 15 5/8..... 605 93

CHARGES.

Freight paid boat, $3.00 per bale	27 00		
Do. shippers' charges, p'r b'l	101 88	—128 88	
River insurance, 1 % on $100 per bale		9 00	
Fire insurance, ½ % p'r month, 6.35		3 17	
Gov. tax & brokerage, ⅜ %		2 26	
Drayage, storage, labor, & weighing, .75		6 75	
Interest on charges		16	
Commission, 2½% on sales		15 14	
			165 36
Nett proceeds			$440 57

E. E. New Orleans, Nov. 29, 1867.
(Sig.) SUMMERS & BRANNINS,
P'r W. L. CAMPBELL.

(Copy.)

97 *Account of sales of* 15 *bales of cotton by Summers and Brannins, received per Magenta, Nov.* 23*rd*, 1867, *for account of R. M. and B. Butler.*

Nov. 26. Sold to M. B. Keene:

◇H	15—366, 349, 381, 466, 410, 381, 390, 335, 383, 401=3,863. 382, 460, 363, 340, 346—1,891.	
51 bales cotton, weighing 5,754, 15⅝		399 06

CHARGES.

Freight paid boat, $3.00 p'r bale	45 00	
Do. do. shippers' charges, p'r b'l	169 81	
	214 18	
River insurance, 1 % on $100 p'r bale	15 00	
Fire insurance, ½ % p'r month, 9.45	4 72	
Gov. tax & brokerage	2 36	
Drayage, storage, labor, & weighing, 75c	11 25	
Interest on charges	29	
Commissions, 2½ % on sales	22 47	
		271 90
Nett proceeds		627 16

E. E. New Orleans, November 29, 1867.
(Sig.) SUMMERS & BRANNINS,
P'r W. L. CAMPBELL.

(Copy.)

98 *Account sales of* 8 *bales cotton by Summers and Brannins, received per Rob't E. Lee, Oct.* 5, 1866, *for account of R. M. and B. Butler.*

Sold to N. B. Keene:

R. M. and B. B. 8—418, 492, 487, 414, 304, 386, 459, 448=3,498.	
8 bales cotton, weighing 3,498	804 54

CHARGES.

Freight paid boat, 2 per bale	16	
Do. do. shippers' charges p'r b'l	10—26 00	
River insurance, 1 % on $1.30 per bale	10 40	
Fire insurance, ½ % per month	4 02	
Gov. tax & brokerage, ⅜ %	3 00	
Drayage, storage, labor, & weighing, 75c	6 00	
Commissions, 2½ % on sales	20 11	
		69 53
Nett proceeds		735 01

E. E. New Orleans, Oct. 13th, 1869.

(Sig.) SUMMERS AND BRANNINS,
P'r R. F. HARRISON.

(Copy.)

99 *Account sales 3 bales cotton by Summers and Brannins, received per R. E. Lee, Sept. 14, 1862, for account of R. M. and B. Butler.*

Sept. 18. Sold to Michel & Co.:

R. M. and B. B., 3: 528, 495, 502=1,525

3 bales cotton, weighing 1,525, 21¼ 324 06

CHARGES.

Freight paid boat, $2 per bale	6	
Do. do. shippers' charges, p'r b'l	3 75—9 75	
River insurance, 1 % on $130 p'r bale	3 90—3 90	
Fire insurance, ½ % p'r month	1 62	
Gov. tax & brokerage, ⅜ %	1 21	
Drayage, storage, labor, & weighing, .75	2 25	
Commission, 2½ % on sales	8 10	
		26 83
Nett proceeds		297 23

E. E. New Orleans, Sept. 18, 1868.

SUMMERS & BRANNINS,
P'r W. L. CAMPBELL.

(Copy.)

100 *Account sales of 15 bales cotton by Summers and Brannins, received per Rob't E. Lee, for account of R. M. and B. Butler.*

Oct. 31. Sold to N. B. Keene:

R. M. and B. B., 15: 474, 426, 442, 443, 481, 410, 298, 440, 454, 442=4,290.

424, 449, 427, 454, 437=2,191.

15 bales cotton, weighing 6,481, 23c 1,490 63

CHARGES.

Freight paid boat, 1.50 per bale	22 50	
Do. do. shippers' charges p'r b'l	18 75	
		41 25
River insurance, 1% on $1.30 p'r bale, 19.50	19 50	
Fire insurance, ½% per month	7 45	

Gov. tax & brokerage, ⅜%	5 59	
Drayage, storage, labor, & weighing, 75c	11 25	
Commission, 2½% on sales	37 26	
		122 30
Nett proceeds		1,368 33

E. E. New Orleans, 2d November, 1868.
(Sig.) SUMMERS AND BRANNINS,
P'r R. F. HARRISON.

(Copy.)

101 *Account sales of 1 bale cotton by Summers and Brannins, received from Hogan and Patton, for account of R. M. and B. Butler.*

Jan'y 6. Sold to N. B. Keene:

(S) (S) 1, 387=387.

1 bale cotton weighing 387, 12½		48 37
CHARGES.		
Fire insurance, ½% p'r month, 51	25	
Gov. tax & brokerage, ⅜%	18	
Drayage, storage, labor, & weighing	75	
Commission, 2½% on sales	1 21	
		2 39
Nett proceeds		$45 98

E. E. New Orleans, Jan'y 13, 1868.
SUMMERS AND BRANNINS,
(Sig.) P'r W. L. CAMPBELL.
(Copy.)

102 *Account sales of 3 bales cotton by Summers and Brannins, received from Hogan and Patton, for account of R. M. and B. Butler.*

Jan'y 6. Sold to N. B. Keene:

(B) (B) 3, 391, 424, 348=1,163.

3 bales cotton, weighing 1,163, 12½		145 37
CHARGES.		
Fire insurance, ½% per month, 1.55	77	
Gov. tax & brokerage, ⅜%	54	
Drayage, storage, labor, & weighing, 75c	2 25	
Commission, 2½% on sales	3 63	
		7 19
Nett proceeds		$138 18

E. E. New Orleans, Jan'y 13, 1868.
(Sig.) SUMMERS AND BRANNINS.
P'r W'M L. CAMPBELL.

(Copy.)

103 *Second deposition of John H. Bright in behalf of complainants.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Be it remembered that, on this the third day of June, in the year one thousand eight hundred and seventy, I, Pierre Charles Cuvellier, a notary public, duly commissioned and sworn in and for the parish of Orleans and city of New Orleans, State of Louisiana, caused to come before me, at my office, in the city of New Orleans aforesaid, to be examined as a witness, de bene esse, John H. Bright, a witness on behalf of the plaintiffs, in a suit pending at Jackson, in the State of Mississippi, in the circuit court of the United States for the southern district of Mississippi, wherein Summers and Brannins are plaintiffs, and Eugene Roach & al. are defendants, and the said examination was taken by me, de bene esse, because the said John H. Bright, the witness, resided at New Orleans, La., more than one hundred miles from Jackson, Mississippi, the place where the court in which said suit is pending and to be tried is appointed by law to be held, and no notification was given to Eugene Roach et al., the adverse party, of the time and place appointed for taking said
104 deposition, to be present at the taking of the same, and to put interrogatories, if he saw fit, because the said defendant was not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption to whom such notification could be given; and I therefore proceeded with said examination; and the said John H. Bright, the witness, being carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I was book-keeper for Summers and Brannins at the time of R. M. and B. Butler commencing business with them. Messrs. R. M. and B. Butler gave their joint notes, with E. Roach security, each for $2,500, due respectively 15–18 Oct'r, 15–18 Nov'r, 1867, which notes were discounted Feb'y 1st, Feb'y 18, 1867, at 10 % for discount and 2½ % commissions for endorsing. The proceeds of said notes, after being discounted at rates set forth, were passed to credit of R. M. & B. Butler, subject to use for payment of supplies furnished for planting purposes. The amount to their credit from said discount was $4,503.08, which amount was absorbed June 8, 1867, and at which time an account was rendered, showing $240.09 to debit. There was no interest charged on amounts drawn, while the account shewed a credit. In'st at the rate of 10 % commenced on their account on and after June 8, 1867, and
105 at which time their account opened with debit $240.09, brot' down as per account rendered. The accounts against R. M. and B. Butler are correct as rendered, and were so acknowledged by R. M. and B. Butler. R. M. Butler, in his conversation with me, never raised any objections to the accounts as rendered, but, on the contrary, seemed satisfied, and said he would have cotton to cover the indebtedness, as the crop was in fine condition. The rate at which Butler's notes were discounted was as per contract; and must have been authorized, as they commenced drawing against the account on the day after the first note was discounted, proceeds of which were exhausted in sixteen days' time, as on the 18th of Feb'y the discounting of the second note was necessitated, proceeds o which were exhausted June 8, 1867. During that time and until the money was exhausted interest was not charged; though R. M. Butler says it was charged. To prove my correctness, I attach copy of account marked "A."

Don't recollect as to protesting of R. M. & B. Butler's drafts, March 2nd & 15, 1867, but, if protested, must have been for want of advice, or that the reason that the money for which such drafts were given was to be applied outside of the purposes, as set forth in the contract.

Summers and Brannins rec'd from R. M. & B. Butler, on the 23rd Nov., 1867, 15 b. c. marked ◇H◇ and 9 b. c. S; and on the 2nd,
106 Jan'y, 1868, rec'd from Hogan and Patton for acc't R. M. & B. Butler, 1 b. c. ◇S◇ ◇S◇ 3 b. c. ◇H◇ ◇H◇ in all 4 bales. These 28 bales cotton were sold at their market value as per classification, and proceeds passed to credit of R. M. & B. Butler. The aggregate weight of these 28 bales was eleven thousand one hundred and eighty-two pounds (11,182) as per weigher's certificate attached, marked B. We rec'd from Hogan and Patton, sales of 1 b. c., which was sold by them, & proceeds paid by them to us; the nett value was $39.94. So that Summers and Brannins only sold 28 b. c., and not 29 bale, as set forth by R. M. Butler. The loss in weight, which has occurred as reported by R. M. Butler, cannot be accounted for otherwise than by the incorrectness of his weighing. The weights as rendered by us and at which cotton was sold and paid for, are correct, for the reason that the cotton was weighed in presence of two weighers, one representing the seller of the cotton, and one representing the buyer. The scales with which said cotton was weighed are of the best makers and made purposely for that business. Said scales are tested daily and previously to weighing of any cottons. The weighers are licensed, and men known to be correct in their transactions, and worthy of trust. Their position is one of great responsibility, as on it depends the negotiation of the payment of exchange, freight, and all matters appertaining to monied
107 transactions in cotton.

The charge of $57.32 paid W. R. Green & Bro. is a clerical error, and should read, paid Hogan and Patton, being for freights and charges on 4 b. c. turned over by them to S. and B. for acc't R. M. and B. Butler, and afterwards sold by S. and B. S. and B. rec'd from R. M. and B. Butler, during the month of Sept. & Oct'r, 1868, twenty-six (26) b. c., weighing in aggregate eleven thousand five hundred and four (11,504) pounds, as set forth in certificate signed by weigher, marked "C."

The items charged in account current Dec'r 19, 1868, $130, $22.22, $70.86, as per vouchers, marked D. E. F., were for expenses incurred in the seizure of fifteen (15) b. c. shipped by Butler, and being diverted by him. Said cotton was seized by E. Roach, he being security on Butlers' notes held by Summers and Brannins. The 15 b. c. were sold at Vicksburg, and R. M. and B. Butler's account with S. and B. credited with proceeds, thereby showing a debit to Butlers' account of amount paid out on account of the cotton.

The item of $39 was for bagging and ties furnished by Hazlett and Woolfolk, Vicksburg, at request of Summers and Brannins, to be used by R. M. and B. Butler in covering cotton; the voucher is attached and marked "G."

The charge of 2½ % commission on balance not met by cotton is correct and proper, for the reason that where monies are advanced to planters on their growing crops, it is done with a view of being
108 repaid by shipments of cotton from the planter of all cotton that he may make, which cotton, when sold, we receive a commission on of 2½ %; therefore, if the planter fails to make cotton enough to pay

his indebtedness, his account is chargeable with the commission, which he must pay in money or other securities.

JOHN H. BRIGHT.

And I do further certify that the preceding deposition was reduced to writing by the witness in my presence and signed by him, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

[L. S.] P. CH'S CUVELLIER,
Notary Public.

(For exhibits to foregoing deposition of John H. Bright, see next page, et seq.—*Cl'k.*)

109 EXHIBIT "A."

(Copy.)

Messrs. R. M. and B. Butler in account current and interest account with Summers and Brannins, Feb'y 19, '68.

DR.

1867.		
Feb'y 2	To paid you	325 00
16	" freight per Lilly	9 50
"	" invoice sundries p'r st'r Magenta	241 52
"	" dr'ft p'd favor Louis Hoffman	85 15
"	" p'd draft " J. W. Roach	100 09
18	" " " " do. do.	200 00
"	" " " " W. Leonard & Bro	1,890 00
23	" " " " st'r Hope	125 00
25	" " " " W. S. Wheeler	200 00
"	" " " " W. Leonard & Bro	200 00
"	" " " " Harrison & Ryatt	350 00
26	" invoice sundries p'r R. E. Lee	298 25
28	" stamps on mortgage	5 00
April 9	" invoice sundries from Louisville	377 15
19	" p'd James Hazlett bill corn & oats	46 15
June 7	" p'd you	38 00
8	" invoice sundries p'r st'r Indiana	252 45
		$4,743 17

CR.

1867.		
Feb'y 1	By proceeds of note due 15-18 Oct	2,256 39
18	" " " " " 15-18 Nov'r	2,246 69
June 8	" balance	240 09
		$4,743 17

110 B.

Nov. 23, '67, received per Magenta ..... 15 ◇H◇

366	382
349	460
381	363
467	340
410	346
381	
390	

		335		
		383		
		401		
		3,863	1,891	5,754
Nov. 23, '67, p'r Magenta, S. 9.....		424		
		433		
		455		
		428		
		425		
		440		
		467		
		403		
		403		
		3,878		3,878
Jan'y 2, '68, from Hogan & Patton	S	S	1	387
" " " " "	H	H	3	391
				424
				348
				1,550	1,550
				lbs. 11,182

I hereby certify that the above weights of twenty-eight b. c. (28) are correct, the same having been rendered by me, and the cotton having been weighed by me. The gross pounds of the twenty-eight (28) b. c. was eleven thousand one hundred and eighty-two (lbs.11,182) pounds.

E. A. TOLEDANO,
Weigher.

111 "C."

Oct. 5, '68, pr. R. E. Lee, R. M. & B. B.-8..	418		
	492		
	487		
	448		
	414		
	394		
	386		
	459		
	3,498		3,498
Oct. 26, R. E. Lee, R. M. & B. B.-15.....	474	424	
	426	449	
	442	427	
	443	454	

	481	437	
	410		
	298		
	440		
	454		
	422		
	4,290	2,191	6,481
Sept. 14, '68, pr. R. E. Lee, R. M. & B. B.–3.....		528	
		495	
		502	
		1,525	1,525
			lbs.11,504

I hereby certify that the above weights of twenty-six b. c. (26) are correct, the same having been rendered by me, and the cotton having been weighed by me. The gross pounds of 26 b. c. was eleven thousand five hundred and four (£11,504) pounds.

E. A. TOLEDANO,
Weigher.

112 "D."

(Duplicate.)

VICKSBURG, MISS., *Dec'r 1st*, 1868.

Received of J. H. Woolfolk one hundred and thirty dolls., att'y's fees, in case of Eugene Roach vs. Butlers.

(Signed) SIMRALL AND YOUNG,
Att'ys for Eugene Roach.

"E."

(Duplicate.)

Received of J. H. Woolfolk, justice's and constable's fees as follows in case of Eugene Roach vs. Butlers:

Justice's fee	3 50	
Constable's fee	18 72	
		$22 22

Dec'r 1st, 1868. Rec'd payment,
(Signed) THO'S CONBOY,
Constable

"F."

(Duplicate.)

Mr. Thomas Conboy to North and Hartigan, Dr.

For freight and charges paid Calumet on 15 b. c	54 50
" paid insurance on same, value $1,500, @ ½.....	7 50

" drayage on same to store, 25 c. p'r bale	3 73
" storage on same, 25 c. p'r bale	3 76
" commissions, 2½ % for advancing $54.50	1 35
	$70 86

Vicksburg, Miss., 1st December, 1868.
Received payment,
(Signed) THOMAS CONBOY,
Constable.

113 "G."

VICKSBURG, MISS., *Dec'r* 18, 1868.

Messrs. Summers and Brannins bought of Hazlett and Woolfolk, ag'ts:

1 roll bagging, 100 y'ds, @ 23	23 00
3 bundles ties, 175 lbs., @ 8	14 00
Drayage & fr't	2 00
	$39 00

Second deposition of E. H. Summers is as follows:

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Be it remembered that, on this twenty-first day of May, in the year one thousand eight hundred and seventy, I, Pierre Charles Cuvellier, a notary public, duly commissioned and qualified in and for the parish of Orleans, State of Louisiana, caused to come before me at my office, No. 134 Gravier street, in the city of New Orleans, in the parish and State aforesaid, as a witness, de bene esse, Edwin H. Summers, a witness in behalf of the plaintiffs, in a suit pending at Jackson, in the State of Mississippi, in the circuit court of the United States for the southern district of Mississippi, wherein Summers and Brannins are plaint-
114 iffs and Eugene Roach & als. are defendants; and the said examination was taken by me, de bene esse, because the said Edwin H. Summers, the witness, resided at New Orleans, Louisiana, more than one hundred miles from Jackson, Mississippi, the place where the court in which said suit is pending and to be tried is appointed by law to be held, and no notification was given to Eugene Roach & al., the adverse party of the time and place appointed for taking said deposition, to be present at the taking of the same, and to put interrogatories if they saw fit, because the said Eugene Roach et al. were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption to whom such notification could be given; and I therefore proceeded with said examination. And the said Edwin H. Summers, the witness, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I am forty-two years of age; have been engaged in the commission business in New Orleans since 1853, and a member of the firm of Summers and Brannins, and president of the Crescent City Bank.

In the month of February, 1867, the firm of Summers and Brannins

agreed with R. M. and B. Butler (who had rented a place from Eugene Roach and J. W. Roach) that upon the said Roachs' paper se-
115 cured by m'tg'e on land for $5,000, and lien of Butler's on the cotton they expected to make, that Summers and Brannins would advance them about $5,000 to aid them in buying stock and making a crop. The said Roach's executed the m'tg'e, and their notes were given over to Summers and Brannins, and by them discounted by agreement at the rate or 10 per ct. per annum, and 2½ p'r ct. for endorsing the paper. I append hereto Butlers' "agreement," marked A, and made part hereof.

The two notes aforesaid were discounted as above and nett proceeds placed to the credits of said Butlers, as will fully appear by reference to a/c current. And the proceeds were paid over to said Butlers in various amounts, and no charge of interest made until the said proceeds were exhausted and Summers and Brannins forced to make advances over and beyond the amount promised, when they are charged 10 per cent. interest, as per their written contract aforesaid. The a/c of the business of 1867 was rend. on the 19th day of Feb'y, 1868, showing balance due $4,774.69, and the letter enclosing same, dated 22 Feb'y, 1868, requested the said Butlers to examine and report if the same was correct, and said a/c was approved by the said Butlers as will more fully appear by the deed of trust on the crop, &c., of 1868, filed in this suit.

It is customary, usual, and legitimate to charge 2½ p'r ct. on
116 any cash balance at the end of the season not met by shipments of cotton. The cotton shipped by the Butlers was sold at the full market-price at time of sale, weighed by a regular licensed weigher, whose character is above suspicion, and the Butlers given full benefit of every pound their cotton weighed.

The item of bags & ties, charged Dec. 19, 1868, was shipped by order of J. W. Roach to cover the balance of Butler's cotton which Roach had attached to keep Butler from diverting it from Summers and Brannins, Roach being bound as Butler's security.

I never heard of any claim of R. M. Butler trumped up for services until after said Butler had been caught by Roach diverting his cotton to other houses, and had attached the same at Vicksburg, amounting to bales, and had thus defeated an effort of said Butler to defraud Summers and Brannins, and also to defraud the said Roach's, whose tenants said Butler was, and who were also his sureties to said Summers and Brannins.

R. M. Butler had frequently stated to me that, being agent of the St. Louis Mutual Life Insurance Co., he was at all times travelling through the country, and if he could be of any service, in view of the liberality of the house towards him, he would be glad to serve them; and it may be that he was requested to see E. P. Jones in passing and report
117 on his crop. Jones' place was not far from Yazoo City, where R. M. Butler resided; and $25 I should think would be a fair compensation for a trip to Jones' place.

The house of Summers and Brannins did appoint R. M. Butler to act as trustee in the place of J. J. B. Hilliard, in the sale of the stock of Ingersoll, whose place was somewhere in the neighborhood of Yazoo City, where said Butler resided; and I enclose herewith said Butler's a/c of said sale, marked (B,) and made part of this deposition; also, said Butler's letters of 8th and 15th Feb'y, and 7th and 23rd March, 1868, marked respectively C, D, E, and F, and made part of this deposition. It will be seen by this that Butler charges $49.50 for effecting this sale, amounting to $585.00. He also sold at private sale 3 mules &

lot of plows, &c., for $335; and $854.05 is all S. and B. ever realized out of said Ingersoll sale or deed of trust, except one poney, which said Butler shipped. The remaining four mules, wagon, plows, &c., handed over by said Ingersoll to said Butler as trustee, he never has accounted for. I was at Butler's place, I think, in July, 1868. He reported to me then that two of the mules had died, one was in the woods, and one, I think, he had working in the plow; and one mule that would not plow he said he had loaned or hired to Dr. Gadberry, of Yazoo City. I afterwards gave an order on Butler for these mules and he refused to give them up, and in this matter has acted in keeping
118 with his fraudulent transactions in endeavoring to spirit away the cotton pledged and mortgaged to Summers and Brannins, whose money had paid for the stock as well as the supplies that raised the crop.

The amount advanced Butler by Harrison was refunded him by Summers and Brannins in Sept., 1868, and is charged to Butlers in their a/c; and the said Butlers had no pretext or excuse to divert their cotton from Summers and Brannins, except a wilful intent to cheat and defraud them; as Brevoort Butler was in the city of New Orleans just before this attempted smuggling away of cotton, and received advances both in money and supplies from Summers and Brannins, as the a/c current shows, and at that time expressed himself well satisfied with the business, and grateful for the kindness he had received. Nor do I believe now that he (the said Brevoort Butler) had any part in the attempt to defraud S. & B. out of the cotton due them; as he was an industrious, hard-working young man who attended to his business, whilst R. M. Butler knew nothing about planting, and I don't think ever lived on the place.

R. M. Butler was never in any instance the agent of Summers and Brannins, except as trustee af's'd in the Ingersoll deed of trust; nor did he ever control the house of Summers and Brannins, directly or indirectly, one bale of cotton, that I am aware of, except his own
119 crop; nor did W'm H. Mangum, of whom he speaks, ever control any cotton, except a few bales which he bought in direct opposition to the wishes and instructions of S. and B. The arrangement made by S. and B. with Mangum was made with *with* him in person in New Orleans, and Butler had nothing to do with it. This Mangum arrangement was very unsatisfactory and only continued a few weeks.

The bill rendered by R. M. Butler against Summers and Brannins is false and unjust in every sense of the word. Instead of S. and B. owing him individually anything, he justly owes them, on his own account, fully $300 for property which he received as trustee *he* and fraudulently appropriated to his own use. I do not believe he ever fed those mules except when he was using them plowing or otherwise, as there was a fine range around him and there was no occasion for feeding them unless he was working them, which I have no doubt he did.

The items charged Dec. 19, 1868, $130, $76.80, $22.22, were expenses incurred on the cotton seized and sold at Vicksburg, by order, and at suit of Roach, and the Butlers are credited with the full amount the cotton brought then, and only charged with the actual cash that had to be paid out to get the proceeds of the cotton; Roach, being Butler's security, having ordered the proceeds of the sale turned over
120 to Summers and Brannins.

The a/c current of R. M. and B. Butler, of 1868, is made up with only eight per cent. interest, when ten per cent. should have been

charged according to the understanding. This would increase the debit balance due S. and B. near $100.

E. H. SUMMERS.

And I do further certify that the preceding deposition was reduced to writing by witness in my presence, and signed by him, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and the impress of my official seal, at New Orleans aforesaid, this 21st day of May, A. D. 1870.

[L. S.] P. CH'S CUVELLIER,
Notary Public.

Exhibit A to foregoing deposition of E. H. Summers is as follows, to wit:

"A."

[Int.-rev. stamp.]

STATE OF MISSISSIPPI, *Yazoo County, set:*

We, Summers and Brannins, a commercial of the city of New Orleans, State of Louisiana, have this day entered into the following trade, contract, and agreement with R. M. and B. Butler; that is to say, the said R. M. and B. Butler are engaged in the cultivation of a crop of cotton and other products on the plantation of E. Roach
121 in said county, but finds it necessary in order to enable him to complete it, to procure certain supplies and certain monies for his said plantation; the said Summers and Brannins are willing and agree to advance said supplies to the extent of five thousand dollars, and in consideration thereof, and as an inducement thereto, the said R. M. and B. Butler agrees and contracts that said an interest in said crop of cotton to the extent and number of bales, average weight when ginned and packed; and said R. M. and B. Butler further agrees and binds himself, in consideration of the premises, to ship the said Summers and Brannins, at New Orleans, La., the said bales of cotton, as well as all the balance of his said crop of cotton.

And said R. M. and B. Butler further agree and bind themselves to pay to said Summers and Brannins 2½ per cent. commission for advancing, and 10 per cent. interest thereon until paid, and the usual commission for selling his cotton.

In testimony whereof we have hereunto set our hands and affixed our seals, this 19th day of February, A. D. 1867.

R. M. AND B. BUTLER.
SUMMERS AND BRANNINS.

Witness:
R. C. SMITH.
W. N. HENDERSON.

122 EXHIBIT "B."

Account sales of six mules and lot of plows and gear for ⅔ of Mess. Summers and Brannins, of New Orleans.

1868.

Feb'y 18.	Two mules sold to W. C. Binford,	$125.....	$250 00	
" "	" " " " " "	$100.....	200 00	
				$450 00

"	"	One lot 2d-hand plows & gear to R. M. & B. Butler	20 00		
"	28.	One small mule to Craig and Rundle	75 00		
"	"	One " " " Z. P. Stutts	40 00		
					135 00
					$585 00

CHARGES.

Feb'y 19.	Feb'y 6th,	paid	board & horse-feed	$2 75	
	" 7	"	boy for care of mules	1 00	
	" 8	"	board & horse-feed	2 75	
	" 10	"	exp's to negotiate sale	3 00	
	" 17	"	" of self & boy to sale	3 50	
	" 19	"	hire of boy to assist driving	1 50	
	" "	"	exp's home & wages of boy 3 days	6 50	
	" "	"	feed for 7 mules & 1 horse	4 00	
				$25 00	
" 24.	To exp's in Yazoo City to negotiate sale			2 00	
" 28.	" " " " " " " "			5 00	
" 29.	" ½ % commissions on dr'ft for $500			2 50	
" 28.	" exp's of feeding & care of 2 mules 10 days			15 00	
					$49 50
					$535 50
Feb'y 29.	By sight-d'ft of Harrison & Hyatt, ag'ts, on Messrs. T. H. & J. M. Allen			$500 00	
	By sight-d'ft of Norval Garrison			17 50	
				$517 50	517 50
Balance due you this day					$18 00

R. M. BUTLER,
Trustee.

123 Exhibit "C" to deposition of E. H. Summers, is as follows, to wit:

"C."

YAZOO CITY, *February* 8, 1868.

MESSRS. SUMMERS AND BRANNINS,
New Orleans, La.:

DEAR SIRS: I have just returned from the Ingersoll place, and beg leave to report that I received from Mr. S. S. Griffin 13 mules, 1 horse, 1 wagon, 14 plows, 6 axes, 12 hoes, 18 prs. trace-chains, 18 prs. hames, 7 blind bridles, 6 spades, 4 cotton-scrapers, 7 double-trees, and 12 single-trees. Two of the mules are large, but very old, and in bad order; two are old and very small; the remaining nine are of medium size and in tolerably fair condition. The horse is an old pony, but in fair order. The wagon, plows, &c., have been in use several years and have suffered accordingly.

I have posted three notices, advertising the sale for the 18th instant; am satisfied the whole will not bring the required amount, ($1,517.00;) and that I must buy it in.

Mr. Griffin offers $335.00 cash for three mules, 3 plows, 4 double-trees, 8 single-trees, 6 axes, 12 hoes, 8 prs. trace-chains, 8 prs. hames, 4 blind bridles, 3 spades, and 2 cotton-scrapers. Allowing $100.00 each for the mules, and the balance ($35,) for the plows, gear, &c. I have sold
124 to him, subject to your approval. The three mules he selects are not, in my opinion, the best in the lot, one being one of the two large old ones. He selects them on account of their being wagon mules.

I found hay and fodder enough, on the place belonging to Dr. Inger-

soll, to feed the stock until day of sale, and have therefore left them with Mr. Griffin. In case I have to buy them in, I will remove them to my place, and take care of them until further orders from you.

Very respectfully, your ob't serv't,

R. M. BUTLER.

Exhibit "D" to said second deposition of E. H. Summers is as follows, to wit:

YAZOO CITY, *Feb'y* 15, 1868.

Messrs. SUMMERS AND BRANNINS,
New Orleans, La.:

DEAR SIRS: Your favor of 13th instant, is just rec'd. Have witnessed an auction sale to-day of mules, and think those sold to Mr. Griffin brought more than they would at auction. I shall cry off the others, wagon, &c., on Tuesday next, and will carry out your instructions. Am informed that many persons will attend the sale. Those not sold, I will take care of for you. I will go again to see Col. Jones, and will write you. My brother is, I think, well advanced in his pre-
125 parations for planting. I have been able thus far to supply him with pork and clothing; but hope to receive the shipment from Louisville, as pork is very high here; have to-day paid $28.00 for one bbl.

Very respectfully, your ob't serv't,

R. M. BUTLER.

Exhibit "E" to said deposition of E. H. Summers is as follows, to wit:

TCHULA, *March* 7, 1668.

Mess. SUMMERS AND BRANNINS, *New Orleans:*

DEAR SIRS: Enclosed please find sight-drafts of D. G. Pepper on Richardson and May for $287.80, and S. G. Carradine on John Nixon & Co., for $48.75, which will balance our ⅜ for sale of 3 mules and lot of plows and gear to S. S. Griffin for $335; also balance due on last remittance, $18.00. I was detained in Yazoo City 3 days, by swollen creeks from heavy rains, at a cost of $15.00, and have paid ½ % for D. G. Pepper's draft, $1.45.

Have now on hand three very old mules, (one very small;) one medium mule, 5 years old, and the pony wagon, and a few broken plows; am having the plows and wagon put in order, and will do my best with all.

Please write me at Yazoo City.

Mr. Griffin says he will need a few bbls. pork, 1 bbls. flour, 1 caddy tobacco, and ½ bbl. molasses, about the middle of May—the whole
126 not to exceed in cost $250. He will pledge his crop and give you good security, if you will advance it to him. He was last year a silent partner of Dr. Ingersoll, and thinks he has a claim on you as an old customer. He is a very energetic young man, and thinks he can safely promise you 40 b. c.

Please do what you can for R. M. and B. Butler, as regards pork. We are working chiefly to pay you our shortcomings of last year.

Very respectfully, your ob't serv't,

R. M. BUTLER.

Drafts paid & cr. March 13, '68, to C. J. Ingersoll.

Exhibit "F," to foregoing deposition of E. H. Summers is as follows to wit:

"F."

YAZOO CITY, *March*, 2*d*, 1868.

Mess. SUMMERS AND BRANNINS,
New Orleans:

DEAR SIRS: Have written you concerning sale of Ingersoll mules, and have made you two remittances, but have no acknowledgement of receipt of either; also wrote you ordering for Norval Garrison 1 bbl. of flour and 1 s'k coarse salt—also some stove-coal. He has supplied himself with coal, but would like you to send the flour and salt by st'r Magenta next Saturday. Please send also a statement of his a/c.

127 The stock that I now have on hand consists of 3 old mules, 1 small young mule, in bad order, and the pony. These, with the wagon and plows, will, I fear, be troublesome to get rid of, but I am doing my best.

We are also anxious to hear from you in regard to pork. Thus far I have been able to buy in Yazoo City at from $28 to $30 per bbl., but my income is very uncertain, and I may not be able to keep up at those rates.

If possible, please send us two or three bbls. of pork now, and order some (say five bb's.) from Louisville. We have finished planting corn, and in my travels I have seen but few planters as forward as we are.

Our chief object in planting this year is to pay our shortcoming to you; but we must have some help to get through.

Write us (R. M. and B. B.) at your earliest convenience, and let me know if my remittances have reached you. If not, they were in drafts, which I can have renewed.

Very respectfully, your ob't serv't,

R. M. BUTLER.

128 And on the final hearing of this cause, the following depositions were read to the court as testimony in behalf of the defendants, herein, to wit:

Deposition of R. M. Butler.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to A. Hero, Esquire, greeting:

Know ye that, in consequence of your prudence and fidelity, you have been appointed, and are hereby invested with full power and authority, to examine R. M. Butler on his corporal oath, as a witness in a cause depending in equity, in the circuit court of the United States for the southern district of Mississippi, wherein Summers and Brannins are complainants, and Eugene Roach and others are defendants, on the part of defendants, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that, at a certain day and place, to be appointed by you for the purpose, you do cause the said R. M. Butler to come before you, and then and there examine him on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into the said circuit court, before the judges thereof, with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Su-

129 preme Court of the United States, and the seal of said circuit court, at Jackson, in said district, this 21st day of April, A. D., 1870, and in the 94th year of the Independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

In the United States circuit court for the southern district of Mississippi.
In chancery.

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET AL. } N. S. 81.

Interrogatories to be propounded to R. M. Butler, one of the defendants in the above cause, at present residing in the city of New Orleans and State of Louisiana, the answers to which will be offered in evidence in behalf of defendants in the above-entitled cause.

Int. 1st. State your residence, occupation, and with whom you carried on business during the years 1867 and 1868.

Int. 2nd. If you state that you engaged in planting with B. Butler, during said time, state whether the firm of R. M. and B. Butler had an account with complainants' firm as commission merchants during those two years.

Int. 3rd. Annex to your deposition any account-current showing the transactions for 1867, between R. M. and B. Butler and Summers and Brannins, and state by whom it was furnished to you.

130 Int. 4th. Point out in your answer to this interrogatory, specially every error, mistake, and inaccuracy, both in the Dr. and Cr. side of said account, and explain each error, mistake, and inaccuracy fully.

Int. 5th. If Summers and Brannins have charged the discount on the notes of Butlers and Roach's, explain the nature of this charge, and explain the error of making this charge against R. M. and B. Butler.

Int. 6th. On 22d April, 1868, the date of a certain deed of trust made by R. M. and B. Butler to one J. J. B. Hilliard, trustees for complainants, explain upon what representations and statements you were induced to recite therein an indebtedness to complainants at that date of $4,774.69. Had you, or not, then scrutinized the accounts of complainants to see if this was the true amount due? If you had not, how and in what manner was this sum fixed upon?

Int. 7th. If you have said that the recitation was made upon the complainants' statements and assurances, state whether you relied entirely upon their honesty and correctness in making the recitation in the deed.

Int. 8th. State the number and weight of the bales of cotton shipped to Summers and Brannins of the 1867 crop.

Int. 9th. Annex to your deposition the ⅛ sales of the 1867 crop, (stating by whom furnished,) and state any discrepancies between
131 the weights of cotton as shipped by you and as stated in the ⅛ sales, stating if the decrease in weights is unusual, and greater than would be caused by ordinary shipment; and also state the quality of cotton shipped, and any discrepancy between the market-price of cotton of that quality at dates of sales and price stated in ⅛ sales.

Int. 10th. State the true amount due Summers and Brannins on the transactions of 1867, deducting the mistakes pointed out by yourself,

and adding the deficiencies in weights and prices as enquired of in 9th interrogatory.

Int. 11th. Annex hereto a/cs current and a/c of sales for the year 1868, stating by whom furnished.

Int. 12th. In answer to this refer to int'ys 8, 9, and 10, apply the inquiries made therein to the transactions of 1868, and answer them as fully as if they were all here repeated and applied to the crop and transactions of 1868.

Int. 13th. State the whole amount due Summers and Brannins for '67 and '68 on their commission merchants' a/c.

Int. 14th. Examine the annexed copy of a/c filed as Exhibit "A," to the answer of R. M. and B. Butler, and state if the same is correct as therein stated.

Int. 15th. Explain each and every item of said a/c fully, the amount and kind of services rendered, and whether the charges for the same are fair and reasonable. State also the nature of the last charge of $500.00.

132 Int. 16th. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JOHNSTON AND JOHNSTON,
Sol's for Def't Butler.

Filed April 5, 1870.

GEO. T. SWANN, *Clk.*

A true copy.
Teste:

GEO. T. SWANN, *Clk.*

Exhibit "A," referred to in the 14th interrogatory, is as follows, to wit:

Summers and Brannins to R. M. and B. Butler, Dr.

1868.			
Jan'y 9.	For services rendered on a/c Col. E. P. Jones....	$150	00
" 23	" services rendered on a/c Col. J. Ingersoll....	200	00
	" feed & care 7 mules for 3 months, @ 4s per day	315	00
	" p'd for medicines for 4 mules and care of same while sick with charbonne.....	50	00
1869.			
June 1st.	" care 2 mules, 8 months, @ $15.00.....	240	00
" 1st.	" medicine & care of one mule, (since dead).....	10	00
July 1st.	" care of 1 mule 1 month.....	15	00
" 1st.	" additional services during 18 months.....	500	00

E. & O. E., Jackson, Miss., July 1st, 1869.

R. M. AND B. BUTLER.

133 Copy of Exhibit A to answer of R. M. and B. Butler, in chancery cause of Summers and Brannins vs. Eugene Roach et al. N. S. 81. In U. S. cir. ct., south. dist. Mississippi, in chancery.
Teste: Geo. T. Swann, cl'k.

Circuit court United States, southern district of Mississippi.

SUMMERS AND BRANNINS, vs. EUGENE ROACH ET AL. } N. S. 81.

Cross-interrogatories to be propounded to R. M. Butler, one of the defendants herein.

Int. 1st. What connection have you with this suit, and what interest in the same?

Int. 2nd. If you annex to your deposition any account-current showing the transactions for 1867, as referred to in Int. 3rd, state how long you have had the same in your possession; state also whether or not you have ever received any additional or further ⅌ from Summers and Brannins. If so, file the same, and file also all of the accounts-current received at any time by the firm of R. M. and B. Butler from Summers and Brannins, and state when each was received. State also if when received, or at any time, you have ever denied the correctness of said accounts. If so, when and at what place, and to whom?

Int. 3rd. At what date, and how did you receive the account-current of 1867?

Int. 4th. If you refer to any statements or assurances in answer-
134 ing Int. No. 6 and 7, state fully all the recitations and assurances, &c., made at the time. State who made the same, what were they, and who was present at the time. Have you stated all that occurred at the time? If not, do so. And do you pretend to give the exact language that was used, or merely your inference and recollection of the purport of the conversation?

Int. 5th. Did you personally weigh each bale of cotton of the crop of 1867? If so, state when and where, and who was present at the time. Did you examine the scale minutely and carefully in weighing, or did you take the weights as called out by some one else? Why was it, if there was error in the weighing, that you did not complain of it to Summers and Brannins at the time?

Int. 6th. If you undertake to speak of the sale of the cotton you sent to Summers and Brannins, state what you mean by its value; whether its cash or marketable value or not; and, if so, in what market do you fix its value? State, particularly, what kind of cotton you sent to Summers and Brannins; whether it was clean or inferior, ordinary, middling, or of what grade; how many bales of each kind did you send; what was the market-value of each of these grades of cotton in New Orleans at the time your cotton was received by Summers and Brannins; when it was sold there, and between the dates of its receipt by them, and its sale?

135 Int. 7th. State at what date you received the account-current of 1868. Did you write disputing the account of 1867 and 1868 at the time when you received the same; and did you ever dispute said accounts or object to the sales of the cotton, or the weights as given by Summers and Brannins? If so, state the time when you first gave them information of your objections.

Int. 8th. State what were the nature and character of the services rendered by you for complainants on ⅌ of Col. E. P. Jones; what time you were occupied in rendering such services; and by whom, and when, and where you were employed in rendering them; and if you ever informed complainants, or either of them, of your charge for such services, or

rendered them any account for the same. If so, when and how? Answer the same questions relative to your claim for services on a/c of C. J. Ingersoll.

Int. 9th. What seven mules of complainants do you refer to in your a/c marked Exhibit "A" to your answer; how did they come into your possession, and for what purpose, and how long did you have them; what medicines did you furnish for the sick mules; what kind of medicine was it; how much did you furnish; from whom did you get it, and what did you pay for it?

Int. 10th. What two mules do you refer to in your a/c of date 1st June, 1869; how did they come into your possession; for what purpose
136 did you have them; who did they belong to; where did you keep them; were they used by you, or any one on the place occupied by you, in raising the crop, or in any other way? If so, how were they used, and how long? If not used, why were they not used? What has become of these two mules, and also of the seven mules referred to? State how, why, and in what way, and for what purpose you ever took into your possession any mules belonging to complainants, from whom you received them, and what have you done with the mules referred to in your a/c. Where are they now?

Int. 11th. What was the nature and character of the additional services during 18 months charged in your account; in what way, and where did you render such services; how long were you occupied in rendering them; who retained you, and when and where did you render such services? Have you ever claimed for such services before filing the account with your answer? If so, when and where did you make such claim? State in what business you were engaged in 1867 & 1868; whether or not you were employed by complainants to attend to any business for them. If so, what business, and where were you employed, and by whom, and for what length of time?

YERGERS,
Sol's for Complainants.
GEO. T. SWANN, *Clk.*

Filed April 21, 1870.

A true copy.
[L. S.] Teste: GEO. T. SWANN, *Clk.*

137 Deposition of R. M. Butler, a witness produced, sworn, and examined at the office of and before me, Andrew Hero, j'r, a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, in the city of New Orleans, of said State of Louisiana, on the fourth day of May, A. D. eighteen hundred and seventy, under and by virtue of the annexed commission issued out of the circuit court of the United States for the southern district of Mississippi, at Jackson, Miss., under date of the twenty-first day of April, A. D. eighteen hundred and seventy, in a certain therein depending in equity, wherein Summers and Brannins are complainants, and Eugene Roach and others are defendants, on the part of the defendants.

Said R. M. BUTLER, of the full age of majority and upwards, a resident of said city of New Orleans, having been by me first duly and solemnly sworn, according to law, to testify the truth, the whole truth, and nothing but *but* the truth relating to the matters in controversy in the cause aforesaid, and to the answers he should give to the direct and

cross-interrogatories herein, and examined on behalf of the defendants, doth depose and say, in answer to the annexed interrogatories and cross-interrogatories, as follows:

To the first interrogatory he saith: I resided, until June 19,
138 1867, in the city of New Orleans, State of Louisiana, and was, until that time, a clerk in the house of R. Bleakley & Co.; after which I removed to a plantation in Yazoo County, Mississippi, which, in partnership with Brevoort Butler, we cultivated during the years eighteen hundred and sixty-seven and eighteen hundred and sixty-eight. The business of the plantation was carried on with Summers and Brannins. In eighteen hundred and sixty-eight I was employed by Summers and Brannins to look after their affairs in Mississippi, with the understanding that my wages for services rendered should be applied to the reduction of the a/c of R. M. and B. Butler.

To the second interrogatory he saith: During the years eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, R. M. and B. Butler had an account with Summers and Brannins, commission merchants.

To the third interrogatory he saith: The account-current hereto annexed and marked Exhibit "A," is the account-current called for in this interrogatory. It was furnished or sent to us by Summers and Brannins.

To the fourth interrogatory he saith: On the two notes dated first and eighteenth February, eighteen hundred and sixty-seven, and due respectively, October 15–18 and November 15–18, 1867, we are charged the usurious discount of fourteen per cent. from their date until maturity. The proceeds of these notes, as so discounted, instead of
139 having been paid over to us on the first and eighteenth of February, eighteen hundred and sixty-seven, were parcelled out to us as the said annexed Exhibit "A" shows. As early as March second and fifteenth, eighteen hundred and sixty-seven, when we had ample and sufficient funds in the hands of Summers and Brannins, we drew on them, and our drafts were allowed to go to protest, as shown by the annexed Exhibits B and C, to this answer, also annexed. On all the items from June the fourteenth, eighteen hundred and sixty-seven, to February the nineteenth, eighteen hundred and sixty-eight, we are charged ten per cent. interest per annum. The item January second, eighteen hundred and sixty-eight, is wrong, as I know that there was no such transaction with W. R. Greene & Bro's. Summers and Brannins have charged therein usurious discount and interest, besides the charge of two and a half per cent. commission on four thousand six hundred and fifty-eight $\frac{24}{100}$ dollars, under date of the nineteenth day of February, eighteen hundred and sixty-eight.

To the fifth interrogatory he saith: Summers and Brannins have charged fourteen per cent. discount on the notes. The notes were discounted without our knowledge or consent, and at such an unwarranted and a damaging rate of discount that the error is apparent. Moreover they have charged, in addition, two and a half per cent. commis-
140 sion for advancing the money realized from the sale of our notes, which sale we did not authorize.

To the sixth interrogatory he saith: Relying on the honesty and integrity of the complainants, we did not, at that time, investigate or scrutinize their account, but took it for granted to be right, with the exception of the loss in weight of the cotton; for, in truth, I saw no account at all when I had agreed to furnish a deed of trust. Was told the amount due, which is that stated, and went home to Yazoo Co.,

from New Orleans, where I received a deed of trust and the account. Having to leave on business, I executed the deed of trust, and had it recorded, and then returned to Summers and Brannins. The account I did not examine or look at for some months subsequent. I thought that we should have realized more money from the sale of our cotton, and complained to them accordingly. Believing that we owed them a balance, and being anxious to settle it as soon as possible on their representations and assurances that the account was correct, and their promise to furnish us sufficient means and supplies to make another crop, I signed and executed said deed of trust immediately upon its receipt, acknowledging our indebtedness at the sum which was fixed and stated by them, and without my having, or my firm, scrutinized or inspected their account.

To the seventh interrogatory he saith: The recitation was
141 made upon complainants' statements and assurances, and did not think that they would make any false statements or render an unjust account. We relied entirely on their honesty or correctness.

To the eighth interrogatory he saith: We shipped Summers and Brannins twenty-nine bales of cotton in eighteen hundred and sixty-seven, which weighed twelve thousand eight hundred pounds.

To the ninth interrogatory he saith: I hereto annex five accounts sales, marked Exhibits D, Nos. 1, 2, 3, 4, and 5, all of which were furnished to us by Summers and Brannins. According to these $\frac{a}{c}$ sales the cotton was sold as weighing eleven thousand five hundred and seventy-five pounds, whereas when we shipped the cotton it weighed twelve thousand eight hundred pounds. This decrease in weights is unusual, and greater than would be caused by ordinary shipments, as we know from the fact that, since doing business with complainants, we have shipped cotton to other commission merchants in New Orleans, and have sustained no such loss. Twenty-four bales of the crop of eighteen hundred and sixty-seven was good middling cotton. The remaining five bales was low middling. Said five bales are accounted for in Exhibits D, 3, 4, and 5. They were of the same picking, ginned and packed at the same time, and exactly of the same grade. By accident, Messrs. Hogan and Patton sold one bale in Exhibit D, No. 5, and obtained fourteen and a quarter cents per pound for it; whereas that in
142 Exhibits D, Nos. 3 and 4, sold by complainants, only yielded twelve and a half cents per pound. In every instance our cotton was sold by complainants at the lowest possible market-rates; and all that they sold should have brought at least two cents per pound more than they account to us. As sales of Messrs. Clapp, Burt & Co., of New Orleans, made for $\frac{a}{c}$ of Messrs. J. W. and E. Roach, of cotton raised on the same plantation as ours, from the same quality of seed, ginned on the same gin-stands, and in every way similar, and sold on the same day brought this difference in price, and did not lose in weight as ours did although weighed on the same scales.

To the tenth interrogatory he saith: The true amount due Summers and Brannins, on the nineteenth day of February, eighteen hundred and sixty-eight, for the transactions of eighteen hundred and sixty-seven, was thirty-five hundred and seven $\frac{98}{100}$, instead of four thousand seven hundred and seventy-four $\frac{69}{100}$ dollars, as claimed by them. This is exclusive of all interest and discount, and inclusive of the value of twelve hundred and twenty-five pounds loss in weight, at fourteen cents per pound, being one hundred and seventy-one $\frac{50}{100}$ dollars, and also the deficiency in price of twelve thousand eight hundred pounds, at two cents per pound, being two hundred and fifty-six dollars.

To the eleventh interrogatory he saith: I hereto annex as Exhibits E,

Nos. 1 and 2, all the accounts-current for eighteen hundred and
143 sixty-eight, and they were furnished or sent to us by the complainants. I also annex hereto, as Exhibits F, Nos. 1, 2, and 3, all account sales of cotton of the year 1868, sold by complainants, and sent or furnished unto us by them. The account sales for fifteen other bales of that crop, sold at Vicksburg, and the proceeds thereof turned over and received by complainants, cannot be hereto attached, as it is on file in Yazoo City, in a suit therein pending with E. Roach.

To the twelfth interrogatory he saith: We shipped Summers and Brannins twenty-six bales of cotton of the crop of eighteen hundred and sixty-eight, which weighed, when we sent them forward, twelve thousand two hundred and thirty-two pounds. The account sales hereunto annexed, marked Exhibits F, Nos. 1, 2, and 3, furnished by complainants, and in which they account for this cotton, the same only weighs eleven thousand five hundred and four *dollars*. This decrease in weights is unusual, and greater than could be caused by ordinary shipments, as we are satisfied from reasons given as to crop of eighteen hundred and sixty-seven, and also by the facts that fifteen bales of the crop of eighteen hundred and sixty-eight sold in Vicksburg, as above mentioned, did not lose in weight, nor did ten other bales of said crop
so suffer, (the proceeds of which ten bales constitute a part of this
144 suit.) These ten bales were sold by Lehman, Newgass & Co., of New Orleans. Nor has any of our crop of eighteen hundred and si'ty-nine, which was sold by Messrs. Garrard, Craig & Co., of New Orleans, lost in weight. The three bales in Exhibit F, No. 1, were low middling, and should have brought twenty-three cents per pound, and the eight and fifteen bales, in Exhibits F, Nos. 2 and 3, were good middling cotton, and should have *been* brought twenty-six cents per pound. These prices we could have realized in Yazoo City, without the cost of carriage, &c., to New Orleans, and we believe that any good house in New Orleans would have obtained these prices, whereas complainants always managed to render us a/c sales as if our cotton was of the worst quality. Item, April 4th, eighteen hundred and sixty-eight, in Exhibits E, Nos. 1 and 2, as complainants did not comply with deed of trust, we dispute the charge for stamps on same. Item, December nineteenth of the year, we neither ordered or received the said ties or bagging, nor do we know anything about them. Items, December 19, 1868, one hundred and thirty dollars; seventy-six dollars and eighty cents; twenty-two $\frac{20}{100}$ dollars; and January 18, 1869, twenty dollars, R. M. and B. Butler have nothing to do with. They are moneys advanced Mr. E. Roach without our sanction or authority, and we did not owe such
amounts to Mr. Roach, nor are we accountable for them. The
145 true amount due complainants, as commission merchants, on the transactions of 1867 and 1868, was eleven hundred and forty-seven dollars and ninety-four cents. This does not include the account of R. M. Butler for services rendered, which amounts to the sum of fourteen hundred and eighty dollars, and leaves them in our debt the sum of three hundred and thirty-two $\frac{06}{100}$ dollars.

To the thirteenth interrogatory he saith: The whole amount due Summers and Brannins, as commission merchants, exclusive of R. M. Butler's a/c against them, was eleven hundred and forty-seven $\frac{94}{100}$ dollars. R. M. Butler's a/c against them is for fourteen hundred and eighty dollars, showing a balance in favor of R. M. and B. Butler of three hundred and thirty-two $\frac{06}{100}$ dollars.

To the fourteenth interrogatory he saith: The account is correct as detailed and stated in said Exhibit A.

To the fifteenth interrogatory he saith: Complainants' letter to R. M.

and B. Butler, dated January ninth, eighteen hundred and sixty-eight, hereto attached and marked Exhibit "G," contains their instructions as to business of Col. E. P. Jones. Also complainants' letter to R. M. Butler, dated February twenty-second, eighteen hundred and sixty-eight, hereto annexed and marked Exhibit H, refers to the same business. Complainants' letter to R. M. and B. Butler, dated April the
146 second of the same year, and marked Exhibit I, as also hereto annexed, refers to Ingersoll's business. Other letters of instructions, &c., are already attached as exhibits to my deposition taken before R. B. Mayes, of Yazoo City, Miss., for Messrs. Wilkinson and Bowman, attorneys for defendant E. Roach in this case, and now are on file in the clerk's office of the supreme court at Jackson, Miss. Complainants' letters of instructions as to feed and care of mules are also attached to the above deposition, taken before Mr. Mayes, now in said clerk's office, and I refer to them in this answer. In accordance with the instructions contained in the several letters just referred to by me and designated by the marks aforesaid, as well as in compliance with the instructions contained in the other letters referred to and on file with said former deposition, the services charged in Exhibit A to the preceding (14) interrogatory were rendered. The charge of five hundred dollars is for general services rendered for complainants as their agents as trustee for them, vice J. J. B. Hilliard; for soliciting shipments of cotton; for assisting their friends or agents, Messrs. W. H. Mangum and Son, in business at Yazoo City, Miss., at their request, as shown by their letter of the twenty-eighth of September, 1868, hereto annexed and marked Exhibit M, in reference to business connected with the Archer plantation—all being so done at their request. All
147 of the above business was attended to by deponent, under the assurances of complainants, through E. H. Summers, that such services should be remunerated. The services rendered were varied, frequently requiring much time and attention, not only of myself, but of my partner, B. Butler, and the services of our hired laborers. We had to feed the stock from corn that we had purchased for ourselves, complainants having failed in their contract to supply us with funds to purchase corn. We were obliged to make other efforts to secure it, and my absence from the place attending to their affairs necessitated the employment of some one else to look after their stock whilst on the place. During the prevalence of charbon and other diseases, some of the stock became sick, and entailed upon us the purchase of medicines, and demanded extra care and attention. All of the charges are fair, just, and reasonable.

To the sixteenth interrogatory he saith: The bad faith of the complainants in not complying with their part of the contracts and agreements, both for eighteen hundred and sixty-seven and eighteen hundred and sixty-eight, as heretofore shown, and also by their letter to R. M. and B. Butler, dated May the thirteenth, eighteen hundred and sixty-eight, hereto annexed and marked Exhibit N; their sacrifice of our crops; their usurious rates of discount and interest, and their re-
148 fusal to pay me or allow the account of R. M. and B. Butler anything for my services, should entitle us to heavy damages from the complainants and force them to indemnify J. W. and E. Roach for the embarrassments their property has been subjected to. Telegram, Exhibit O, hereto annexed, gives privilege lien to Harrison and Hyatt. It is the original received by them from the complainants.

To the first cross-interrogatory he saith: I am one of the firm of R. M. and B. Butler, and am interested as one of the defendants.

To the second cross-interrogatory he saith: All the accounts referred to have been annexed as exhibits to my answers. Have received no other accounts from Summers and Brannins. Each account is dated, came to hand in due season after their respective dates, and have been in my possession ever since. I have denied the correctness of these accounts to complainants (Mr. E. H. Summers) in their office, in New Orleans, in December, eighteen hundred and sixty-eight.

To the third cross-interrogatory he saith: Complainants' letter to R. M. and B. Butler, dated 22d February, 1868, and marked Exhibit H, was received in due season and contained the account-current of eighteen hundred and sixty-seven.

To the fourth cross-interrogatory he saith: Complainants
149 agreed to furnish us sufficient means and supplies to make another crop of cotton, out of which we were to meet our indebtedness to them. They also agreed to employ me to look after their affairs in certain parts of Mississippi; to pay my expenses, and credit the account of R. M. and B. Butler with a liberal salary for my services. They were made by E. H. Summers, of complainants' firm; they were as above specified and as stated in my previous answers. Do not know who was present at the time, nor do I pretend to give the exact language that was used at the time. I state what I understood and know to have been the purport and meaning of the conversations and instructions.

To the fifth cross-interrogatory he saith: I did personally weigh each and every bale of the crop of eighteen hundred and sixty-seven, at the gin-house, on the Prairie plantation, in Yazoo County, Miss. My partner, B. Butler, and several of our laborers were present at the time of weighing, which was just after the cotton was packed, and immediately before its shipment unto complainants. I did examine the scale minutely and carefully in weighing. I did complain to the complainants of the falling off in weights as soon as I received the account sales of the cotton.

To the sixth cross-interrogatory he saith: I mean its cash market-
value in the New Orleans market. I sent twenty-four bales
150 of middling cotton and five bales of low middling cotton in (1867) eighteen hundred and sixty-seven. The market-value of the twenty-four bales of middling cotton at the time specified, Nov. 23rd to Nov. 26, 1867, was from fifteen to eighteen cents per pound, and of the five bales of low middling, from Dec'r 23d, 1867, to Jan'y 6, 1868, was from fourteen to sixteen cents per pound.

To the seventh cross-interrogatory he saith: Exhibit E, No. 1, was received a few days after its date. E, No. 2, was also received in due season after its date. I did not write disputing the accounts for eighteen hundred and sixty-seven and eighteen hundred and sixty-eight. I have disputed the said accounts and objected to the sales and weights of the cotton as given by Summers and Brannins. I first made objections immediately after the receipt of ac. sales of the first shipment of cotton, and cited Mess. Clapp, Bro's & Co.' ac. sales of same time for Messrs. Roach.

To the eighth cross-interrogatory he saith: I was instructed by complainants to go to Col. E. P. Jones' plantation and endeavor to hurry up shipments of cotton, and not finding him (Col. Jones) on the place, was obliged to hunt him up in order to transact the business. I was some two weeks engaged in making trips to find him, and was employed
by complainants, as their letters filed as exhibits to my foregoing
151 answers herein and to answers for Messrs. Wilkinson and Bow-

man show. I did inform complainants of my charge for same, and rendered them an a/c in December, eighteen hundred and sixty-eight, in their office in New Orleans. I was directed by complainants to transact the Ingersoll business, as their letter filed as exhibits herein show, and I was engaged in said business for the time specified in my account. I have informed them of the charge, and rendered them an a/c for the same in December, eighteen and sixty-eight, as above.

To the ninth cross-interrogatory he saith: The seven mules were the Ingersoll mules, and they came into my possession by virtue of a deed of trust, vice J. J. B. Hilliard, for complainants' benefit. I had them for different lengths of time, and I furnished them such medecines as were in general use in my neighborhood for such sick mules, and at least sixty dollars worth of medicines. I purchased the same from druggists in Yazoo City, Mississippi, and paid at least sixty dollars for thes ame.

To the tenth cross-interrogatory he saith: Two of the above-mentioned seven mules which came into my possession as above specified for the benefit of the complainants to whom they belonged under said deed of trust from Ingersoll. I took such care of them as a prudent man would take of his stock and kept them on the place in various ways
152 at different times in order to have them better cared for. R. M. and B. Butler did not need or use them, as we had sufficient stock of our own. One of these two mules died, and the other is still in my custody, that is, these two of the seven mules; of the other five, three were sold and two are dead. The mules came into my possession in the manner and for the reasons above stated, and they have all been accounted for unto complainants, and the proceeds of those sold remitted to complainants in due season.

To the eleventh cross-interrogatory he saith: Travelling agent for complainants. I solicited shipments of cotton to and for them; was engaged in looking after debts due them, and in endeavoring to have such debt, settled or paid. By travelling in Yazoo and the neighboring counties in Mississippi for eighteen months. I was retained by complainants during the year 1868, and part of 1869, and rendered such services as above stated in Yazoo and adjoining counties in Mississippi. I have not claimed for said services before filing said a/c. I was engaged in planting, and was also interested in an insurance company as well as had some little business for other parties. I was employed by complainants to attend to their business in Yazoo and other counties in Mississippi, as heretofore specified, and as shown by the various
153 exhibits filed. I was employed by them, but no specific length of time was stated, and I did business for them during a period of eighteen months as charged in my said account.

R. M. BUTLER.

And I further certify that the preceding deposition was reduced to writing by me, and signed by the said R. M. Butler, and that I am not of counsel or attorney for either of the parties to said suit, nor of kin, or interested in the event thereof.

As witness my hand and seal at New Orleans this fourth of May, A. D. 1870.

[L. S.] ANDREW HERO, J'R,
Not. Pub.

[Int.-rev. stamp.]

(For exhibits to foregoing deposition of said R. M. Butler, see the next and following pages. *CVk.*)

154

EXHIBIT "A."

Messrs. R. M. and B. Butler in account-current and interest account with Summers and Brannins, Feb'y 19, '68.

DR.

1867.				
Feb'y 2	To paid you			325 00
16	" freight, per Lilly			9 50
"	" inv. sund's, p'r Magenta			241 52
"	" draft fav. Louis Hoffman			85 15
"	" " J. W. Roach			100 00
18	" " " " "			200 00
"	" " " W. Leonard & Bro			1,890 00
23	" " " st'r Hope			125 00
25	" " " W. S. Wheeler			200 00
"	" " " W. Leonard & Bro			200 00
"	" " " Harrison & Hyatt			350 00
26	" inv. sund's, p'r R. E. Lee			298 25
28	" stamps on mortgage			5 00
April 9	" inv. sund's from Louisville			377 15
19	" p'd James Hazlett's bill, corn and oats			46 15
June 7	" " you			38 00
8	" inv. sund's, p'r Indiana			252 45
				$4,743 17
June 8	To balance	256	17 06	240 09
" 19	" p'd st'r Hope	245	3 68	53 80
July 2	" inv. sund's, p'r Quitman	232	4 25	66 47
3	" draft fav. Harrison & Hyatt	231	3 53	54 75
Aug't 7	" inv. sund., p'r Norman, from L'v'lle	196	3 10	56 60
14	" " " " Empire, " "	189	7 25	138 12
17	" p'd W. R. Greene & Co., bill corn	186	1 29	24 59
20	" " Stewart and Mitchell for for'd'g & fr't	183	91	17 50
30	" " " " " " " "	173	10	2 25
Sept'r 7	" freight on pork, per Calumet	165	19	3 75
7	" inv. sund's, p'r National	165	1 79	38 95
23	" freight, p'r do	149	09	2 25
Oct'r 18	" joint note due this day	144	86 13	2,500 00
Nov'r 18	" " " " " "	93	64 56	2,500 00
28	" inv. sund's, p'r Quitman	83	58	25 11
	Forward		194 51	$5,724 23
155				
1868.	To amount brought forward		194 51	$5,724 23
Jan'y 2	" p'd W. R. Greene & Bro., charges on 4 b. c	48	76 27	57 33
Feb'y 19	" interest on above to date		195 27	195 27
" "	" 2½ % commission on balance, 4,658.24			116 45
				6,093 28
1868.				
Feb'y 19	To balance			$4,774 69

CR.

1867.				
Feb'y 1	By proceeds of note due 15-18 Oct'r			2,256 39
18	" " " " 15-18 Nov'r			2,246 69
June 8	" balance			240 09
				$4,743 17
1867.				
Nov'r 29	By net pro. 24 B. C	82	24 33	1,067 73
1868.				
Jan'y 2	" this am't from Hogan and Patton, proceeds 1 B. C	48	54	39 94
" 13	" net pro. 4 B. C	37	1 89	184 16
Feb'y 19	" interest on above to date		26 76	26 76
				1,318 59
1868.	By amount brought forward			1,318 59
Feb'y 19	" balance			4,774 69
				6,093 28

E. and O. E. New Orleans, Feb'y 19, 1868.

SUMMERS AND BRANNINS.
P'r JOHN M. BRIGHT.

156 Exhibit "B" to said deposition of said R. M. Butler is as follows, to wit:

315.
$50.00.] EXCHANGE BANK OF VICKSBURG,
Vicksburg, Miss., February 27th, 1867.

At sight pay to the order of Nicholas Barrett & Co. fifty dollars, for value received.

R. M. AND B. BUTLER,
Per R. M. BUTLER.

To Messrs. SUMMERS AND BRANNINS,
186 *Gravier St., New Orleans.*

(Endorsed:) Pay Ober, Atwater & Co., or order.
(Erased:) NICHOLAS BARRETT,
(Erased:) OBER, ATWATER & CO.

[Int.-rev. stamp.]

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest be it known that, on this second day of March, in the year one thousand eight hundred and sixty-seven, at the request of Messrs. Ober, Atwater & Co., of this city, holders of the original draft, whereof a true copy is on the reverse hereof written, I, Edward G. Gottschalk, a notary public, dwelling in the city of New Orleans, duly commissioned and sworn, presented said draft to Mr. Brannins, copartner of the firm of the drawees thereof, at their office, and demanded of him to pay the same. He answered that said draft could not be paid. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-
157 exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft.

Thus done and protested in the presence of Selim Wagner and James Foley, witnesses.

In testimony whereof I grant these presents, under my signature, and the impress of my seal of office, at New Orleans, on the day and year first above written.

[L. S.] E. G. GOTTSCHALK,
Notary Public.

$50.] EXCHANGE BANK OF VICKSBURG,
Vicksburg, Miss., February 27th, 1867.

At sight pay to the order of Nicholas Barrett & Co. fifty dollars, for value received.

R. M. AND B. BUTLER,
Per R. M. BUTLER.

To Messrs. SUMMERS AND BRANNINS,
186 *Gravier St., New Orleans.*

(Endorsed:) Pay Ober, Atwater & Co., or order.
NICHOLAS BARRETT & CO.

EXCHANGE BANK, VICKSBURG, MISS.,
NICHOLLS, BARRETT & CO.
Vicksburg, Miss., March 9th, 1867.

Messrs. SUMMERS AND BRANNINS,
186 *Gravier St., New Orleans, L'a:*

SIRS: Much to my surprise, I find that the sight draft of R. M. Butler, drawn in favor of this firm, Feb'y 27th, for fifty dollars, was protested on the 2nd of March. I was in your office on the 6th of March, and nothing was said about it. I have requested Messrs. Nicholls, Barrett & Co. to send draft and protest back to you. You will please not charge me with protest.

158

Very respectfully, your ob't serv't,

R. M. BUTLER.

Exhibit "C" to said deposition of R. M. Butler is as follows, to wit:

$80.00.] JACKSON, MISS., *March 8th*, 1867.

At sight pay to the order of G. D. Sidway eighty dollars, value received, and charge the same to account of—

R. M. AND B. BUTLER,
Per R. M. BUTLER.

To Mess. SUMMERS AND BRANNINS,
186 *Gravier Street, New Orleans.*

(Endorsed:) G. D. SIDWAY.
(Erased:) J. L. DELERY, ESQ.
(Erased:) J. GREEN, *Pres't.*

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this fifteenth day of March, in the year one thousand eight hundred and sixty-seven, at the request of the cashier of and holder for The Citizens' Bank of Louisiana, of the original draft, whereof a true copy is on the reverse hereof written, I, Felix Grima, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy, Charles G. Andry, presented the said draft to Mr. Brannins, of the firm of Summers and Brannins, the drawees, at their office, No. 186 Gravier street, in this city, and demanded payment thereof, and was answered that the said draft could not be paid. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered for want of payment of the said draft.

159

Thus done and protested in the presence of Edgar Grima and Charles G. Andry, both of this city, witnesses.

In testimony whereof I grant these presents, under my signature, and the impress of my seal of office, at New Orleans, on the day and year first above written.

[L. S.] F'X GRIMA, *Not. Pub.*

CHA'S G. ANDRY
EDGAR GRIMA.

$80.00.] JACKSON, MISS., *March 8th*, 1867.

At sight pay to the order of G. D. Sidway eighty dollars, value received, and charge the same to account of—

R. M. AND B. BUTLER,
P'r R. M. BUTLER.

To Messrs. SUMMERS AND BRANNINS,
186 *Gravier Street, New Orleans.*

(Endorsed:)

G. D. SIDWAY.

Pay J. L. Delery, esq., cashier, or order, for account of First National Bank, Jackson, Miss.

J. GREEN, *Pres't.*

I, the undersigned notary, do hereby certify that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them, by me written and
160 addressed, dated on the day of said protest, and served on them respectively, in the manner following, viz: By directing the letter for R. M. and B. Butler, drawers, to them at Jackson, Mississippi, and by enclosing the one for G. D. Sidway, endorser, with a duplicate letter for said R. M. and B. Butler, in the one for J. Green, president, directed to him at Jackson, Miss., as requested by the cashier of the Citizens' Bank; which letters I deposited, prepaid, in the post-office in this city, by my deputy, Charles G. Andry, on the same day of this protest, in time to go by the first mail thereafter.

In faith whereof I have hereunto signed my name, together with Edgar Grima and Charles G. Andry, witnesses, at New Orleans, this fifteenth day of March, eighteen hundred and sixty-seven.

[L. S.] F'X GRIMA, *Not. Pub.*

CHA'S G. ANDRY.
EDGAR GRIMA.

Exhibits "D," Nos. 1, 2, 3, 4, and 5, to said deposition of R. M. Butler, are as follows, to wit:

161 EXHIBIT "D," No. 1.

Account sales of 15 *bales cotton by Summers and Brannins, received per Magenta November* 23*d*, 1867, *for account of Messrs, R. M. and B. Butler.*

Nov. 26. Sold to To. N. B. Keene.

◇H◇ 15. 366, 349, 381, 467, 410, 381, 390, 335, 383, 401.—3863.

382, 460, 363, 340, 346—1891.

15 bales cotton, weighing 5754 *a* 15⅝..... $899 06

CHARGES.

Freight paid boat, $3.00 per bale.....	45 00	
do. do. shipper's charges p'r B. L.....169 81		
		214 81
River insurance 1% on $100.00, per bale.....		15 00

Fire insurance ½ % per month, 9.45	4 72	
Gov. tax and brokerage ⅜ %	3 36	
Drayage, storage, labor, and weighing, 75c	11 25	
Interest on charges	29	
Commission 2½ % on sales	22 47	
		271 90
Nett proceeds		627 16

E. E. New Orleans, November 29th, 1868.

SUMMERS AND BRANNINS,
P'r W. L. CAMPBELL.

162 EXHIBIT "D," No. 2.

Account sales 9 bales cotton by Summers and Brannins, received per Magenta. Nov. 23d, 1867, for account of Messrs. R. M. and B. Butler.

Nov. 26. Sold to N. B. Keene.

(S) 9. 440, 425, 428, 455, 433, 424, 403, 403, 467—3878.

9 bales cotton, weighing 3878 *a* 15⅝ 605 93

CHARGES.

Freight paid boat, $3.00 per bale	27 00	
do. do. shipper's charges, per B. L.	101 88	
	128 88	
River insurance 1 % on $100 per bale	9 00	
Fire insurance ½ % per month, 6.35	3 17	
Gov. tax & brokerage ⅜ %	2 26	
Drayage, storage, labor, and weighing, 75	6 75	
Interest on charges	16	
Commission 2½ % on sales	15 14	
		165 36
Nett proceeds		440 57

E. E. New Orleans, Nov. 29, 1867.

SUMMERS AND BRANNINS.
W'M L. CAMPBELL.

163 EXHIBIT "D," No. 3.

Account sales of 1 bale cotton by Summers and Brannins, received from Hogan and Patton, for account of Messrs. R. M. and B. Butler.

Jan'y 6. Sold to N. B. Keene.

(S) (S) 1 387—387.

1 bale cotton, weighing, 387, 12½ 48 37

CHARGES.

Fire insurance ½% per month, 50	25	
Gov. tax and brokerage ⅜ %	18	
Drayage, storage, labor, and weighing	75	
Commission, 2½% on sales	1 21	
		21 39
Nett proceeds		45 98

E. E. New Orleans, Jan'y 13th, 1868.

SUMMERS AND BRANNINS,
W'M L. CAMPBELL.

164 EXHIBIT "D," No. 4.

Account sales of 3 bales cotton by Summers and Brannins, received from Hogan and Patton, for account of Messrs. R. M. and B. Butler.

Jan'y 6. Sold to N. B. Keene.

(H) (H) 3. 391, 424, 348—1163.

3 bales cotton, weighing 1163, 12½ 145 37

CHARGES.

Fire insurance ½% per month, 1.55	77	
Gov. tax and brokerage, ⅜ %	54	
Drayage, storage, labor, and weighing, 75	2 25	
Commission, 2½ % on sales	3 63	
		7 19
Nett proceeds		138 18

E. E. New Orleans, Jan'y 13, 1868.

SUMMERS AND BRANNINS,
Per W'M L. CAMPBELL.

165 EXHIBIT "D," No. 5.

Sale of one (of 2) bales cotton by Hogan & Patton for account of steamer "Hope," received per "Magenta," Dec'r 13th, 1867.

Sold to Burnham and Dexter, Dec'r 17th, 1867.

(S) (S) 1, (of 2.)

One bale cotton, w. 393 lbs. *a* 14¼ 56 00

CHARGES.

Tax on sale	06
Freight, $3.00 Charges, p'r B. L., $9.68	12 68
River insurance on $1.00 p'r bale *a* ¾%	75
Sale *a* ½	28
Drayage, storage, labor, & weighing, *a* p'r bale 75	

Brokerage on sale *a* ¼ %.....14....			89
Commission do 2½ %.....		1 40	
			16 06
Nett proceeds, doll's.....			39 94

E. E. New Orleans, Dec'r 23d, 1867.

HOGAN AND PATTON,
P'r ROSSER.

166

EXHIBIT E, No. 1.

Messrs. R. M. and B. Butler in account-current with Summers & Brannins.

DR.

(Duplicate.)

1867.			
Feb'y 7	To paid you.....	.....	325 00
16	" freight, per Lilly.....	.....	9 50
	" inv. sund's, p'r Magenta.....	.....	241 52
	" draft favor Louis Hoffman.....	.....	85 15
	" " " J. W. Roach.....	.....	100 00
18	" " " " "	.....	200 00
	" " " W. Leonard & Bro.....	.....	1,890 00
23	" " " st'r Hope.....	.....	125 00
25	" " " W. J. Wheeler.....	.....	200 00
	" " " W. Leonard & Bro.....	.....	200 00
	" " " Harrison and Hyatt.....	.....	350 00
26	" inv. sund's, p'r R. E. Lee.....	.....	298 25
28	" stamps on mortgage.....	.....	5 00
April 9	" inv. sund's from Louisville.....	.....	377 15
19	" p'd James Hazlett's bill, corn and oats.....	.....	46 15
June 7	" " you.....	.....	38 00
8	" inv. sund's, p'r Indiana.....	.....	252 45
			4,743 17
	CR.		
1867.			
Feb'y 1	By proceeds of note due 15-18 Oct'r.....	2,256 39	
18	" " " " " 15-18 Nov'r	2,246 69	
			4,503 08
June 8	To balance due.....	.....	240 09
19	" p'd st'r Hope.....	.....	53 80
July 2	" inv. sund's, p'r Quitman.....	.....	66 47
3	" draft, favor Harrison & Hyatt.....	.....	54 75
August 7	" inv. sund's, p'r Norman, from Louisville.....	.....	56 60
14	" " " " Empire	.....	138 12
17	" p'd W. R. Green & Co., bill corn.....	.....	24 59
			(over.)
167 20	" " Stewart & Mitchell, for for'dge & fr't	.....	17 50
30	" " " " " " "	.....	2 25
Sept. 7	" freights on pork, p'r Calumet.....	.....	3 75
7	" inv. sund's, p'r National.....	.....	38 95
23	" freight, ...	.....	2 25
Oct. 18	" joint note, due this day.....	.....	2,500 00
Nov. 18	" " " " "	.....	2,500 00
28	" inv. sund's, p'r Quitman	.....	25 11
1868.			
Jan'y 2	" p'd W. R. Green & Bro., ch'g's on 4 b. c.....	.....	57 33
Feb'y 19	" interest on above to date.....	.....	195 27
" "	" 2½ % commissions on balance, $4,658.24.....	.....	116 45
			6,093 28
	CR.		
1867.			
Nov. 29	By nett p'r 24 b. c.....	1,067 73	
1868.			
Jan'y 2	" this am't from Hogan & Patton, b. c.....	39 94	
13	" nett pro. 4 b. c.....	184 16	
Feb'y 19	" interest on above to date.....	26 76	1,318 59
" "	To balance due.....	.....	4,774 69

E. & O. E.
New Orleans, Feb'y 19, 1868.

SUMMERS AND BRANNINS.
P'r JOHN H. BRIGHT.

Messrs. R. M. and B. Butler in proforma account with Summers & Brannins.

1868.			
Feb'y 19	To balance as per acc't rendered		4,774 69
Ap'l 4	" stamps on deed trust		8 00
11	" inv. pork, per Quitman		59 86
25	" p'd freight, " Quitman		3 00
May 11	" draft, fav. Harrison & Hyatt		175 00
	" p'd freight Ap'l 6		2 25
168			
June 4	" " telegram		2 70
8	" " " from them		2 16
11	" draft fav. st'r Calumet		100 00
25	" " " " "		43 20
27	" " " " "		48 50
"	" inv. sund's, p'r Quitman		62 01
July 3	" dr'ft fav. st'r Calumet		27 82
7	" telegram to them		1 50
10	" p'd D. W. Butler, balance of $51 left by him July 7		49 50
13	" freight, p'r Gov. Allen		5 00
20	" inv. pork, from Louisville		92 50
24	" draft favor st'r Calumet		100 00
August 22	" inv. osnaburgs		17 24
24	" draft fav'r st'r Calumet		59 00
28	" " " E. G. Morse		119 73
Sept. 14	" " " Hiram Harrison, ag't		258 54
			$6,010 20
	CR.		
1868.			
July 7	By this am't rec'd from D. W. Butler		51 00
Sept'r 14	To balance due us		5,959 20

E. & O. E. New Orleans, Sept. 14, 1868.

SUMMERS AND BRANNINS.
P'r JOHN H. BRIGHT.

169 EXHIBIT E, No. 2.—*Continued.*

Messrs. R. M. and B. Butler in account-current and interest-account with Summers and Brannins, March 15, '69.

DR.

1868.					
Feb'y 19	To balance as per acc't rendered	390	413 89		$4,774 69
April 4	" stamps on deed of trust	345	61		8 00
11	" inv. pork, per Quitman	338	4 51		59 86
25	" p'd freight	324	22		3 00
May 11	" draft, favor Harrison & Hyatt	308	11 98		175 00
"	" freight	308	21		2 25
June 4	" telegram	284	13		2 70
8	" " from them	280	12		2 16
11	" draft, fav. st'r Calumet	277	6 16		100 00
25	" " " "	263	2 51		43 20
27	" " " "	261	2 84		48 50
"	" inv. sund's, per Quitman	261	3 60		62 00
July 3	" draft, favor st'r Calumet	255	1 59		27 82
7	" telegram	251			1 50
10	" p'd D. N. Butler balance of $51 left by him July 7, '68				49 50
13	" Freight	245	16		3 00
20	" inv. sund's from Louisville	238	4 92		92 50
24	" draft, fav. st'r Calumet	234	5 20		100 00
August 22	" inv. osnaburgs	205	77		17 24
24	" draft, fav. st'r Calumet	203	2 66		59 00
28	" " " E. G. Morse	199	5 98		119 73
Sept'r 14	" H " " Hiram Harrison, ag't	182	10 48		258 54
25	" " " W. H. Mangum	171	1 03		27 45
30	" " " st'r Calumet	166	1 25		33 93
Oct'r 6	" inv., bagg. & pork	160	8 11		228 14
14	" p'd Brevoort Butler	152	3 38		100 00
15	" inv. whiskey	151	81		23 83
17	" " bagg. & pork	149	53		15 50
Nov. 3	" " pork	132	2 93		99 75
5	" p'd Brevort Butler	130	87		30 00
19	" freight on pork	116	18		6 75
21	" paid R. M. Butler	114	63		25 00
	Forward		497 56		$6,600 55

EXHIBIT E, No. 2.—*Continued.*

170	To amount brought forward		497 56	$6,600 55
1868.				
Dec'r 2	" costs suit vs. Hogan & Patton	103	14	6 00
18	" p'd R. M. Butler	87	97	50 00
19	" bagging & ties furnished by Hazlett & W	86	75	39 00
	" att'ys fees p'd Simrall & Young $130			
	" bill paid North & Hartigan 70 86			
	" justice & constable's fees 22 22	104	5 15	
				223 08
1869.				
Jan'y 8	" Mr. McMaster's expenses to Vicksburg	66	29	20 00
March 15	" interest on above to date		$504 86	504 86
				$7,443 49
1869.				
March 15	To balance			$3,615 88

CR.

1868.				
July 7	By this am't rec'd from D. N. Butler	251		51 00
Sept. 18	" nett pro., 3 b. c	178	11 75	297 23
Oct. 13	" " " 8 "	153	24 99	735
Nov. 2	" " " 15 "	133	40 44	1,368 33
Dec. 1	" " " 15 " sold at Vicksburg	104	29 35	1,269 52
1869.				
March 15	" in'st on above to date		$106 53	106 53
	Forward			$3,827 61
	By amount brought forward			$3,827 61
1869.				
March 15	" balance			3,615 88
				$7,443 49

E. and O. E. New Orleans, March 15, 1869.

SUMMERS AND BRANNINS,
P'r JOHN H. BRIGHT.

171 EXHIBIT F, No. 1.

Account sales of 3 *bales cotton by Summers and Brannins, received per R. E. Lee, Sept.* 14, 1867, *for account of Messrs. R. M. and B. Butler.*

Sept'r 15. Sold to Michel & Co.:
R. M. and B. B., 3.—528, 495, 502=1,525.

3 bales cotton, weighing 1,525—21¼ 324 06

CHARGES.

Freight paid boat, $2 per bale	6	
" " shipper's charges, p'r b. l.	3 75	
	9 75	
River insurance, 1 % on $130, per bale—3.90	3 90	
Fire insurance, ½ % p'r month on gross am't	1 62	
Gov. tax and brokerage, ¾ %	1 21	
Drayage, storage, labor, & weighing—75	2 25	
Commission, 2½ % on sales	8 10	
		26 83
Nett proceeds		297 23

E. E. New Orleans, Sept'r 18, 1868.

SUMMERS AND BRANNINS,
Per JOHN H. BRIGHT.

172 F, No. 2.

Account sales of 8 *bales cotton by Summers and Brannins, received per R. E. Lee, Oct'r* 5, 1868, *for account of Messrs. R. M. and B. Butler.*

1868. Oct. 10th. Sold to Michel & Co.:
R. M. and B. B., 8.—418, 492, 487, 448, 414, 394, 386, 459 = 3,498.

8 bales cotton, weighing 3,498,—23c 804 54

CHARGES.

Freight paid boat, $2 per bale.....	16 00		
" " shipper's charges, p'r b. l.....	10 00		
		26 00	
River insurance, 1 % on $130, per bale.....		10 40	
Fire insurance, ½ % per month.....		4 02	
Gov. tax and brokerage, ⅜ %.....		3 01	
Drayage, storage, labor, & weighing—75c		6 00	
Commissions, 2½ % on sales.....		20 11	
			69 54
Nett proceeds.....			$735 00

E. E. New Orleans, Oct'r 13, 1868.
SUMMERS AND BRANNINS,
P'r J. H. B.

173 EXHIBIT F, No. 3.

Account sales of 15 *bales cotton by Summers and Brannins, received per Rob't E. Lee, Octo.* 26, *for account of R. M. and B. Butler.*

Oct. 31. Sold to N. B. Keene:
R. M. & B. B., 15.—474, 426, 442, 443, 481, 410, 298, 440, 454, 422= 4,290; 424, 449, 427, 454, 437 = 2,191.

15 bales cotton, weighing 6,481 lbs., 23..... 1,490 63

CHARGES.

Freight paid boat, $1.50 per bale	22 55		
do. do. shipper's charges, per b. l.....	18 75		
		41 25	
River insurance, 1 % on $130 per bale—19.50..		19 50	
Fire insurance, ½ % per month.....		7 45	
Gov. tax and brokerage, ⅜ %		5 59	
Drayage, storage, labor, and weighing—75.....		11 25	
Commission, 2½ % on sales.....		37 26	
			122 30
Nett proceeds.....			$1,368 33

E. E. New Orleans, 2nd November, 1868.
SUMMERS AND BRANNINS,
Per RICH'D F. HARRISON.

174 Exhibit "G" to deposition of R. M. Butler, is as follows, to wit:

Mail.] NEW ORLEANS, *Jan'y* 9, '68.

Mess. R. M. and B. BUTLER,
Yazoo City, Miss.:

GENTS: Yours of 31st came duly to hand, and would have been answered sooner but from the fact that we have been expecting our Mr. A. O. B. for some days, and wished to consult with him before replying. He has been delayed, but telegraphs us that he will leave Louisville for N. O. to-day, and so soon as he arrives will give you a definite answer, tho' we can see no objection to the proposition you make, provided you can make the arrangement contemplated, and provided Mr. Roach will make no objection to the stay of proceedings on your joint note.

In the mean time would be glad to have your Mr. R. M. Butler go up to Col. E. P. Jones' pl't and try, if possible, to get him to ship cotton to meet his indebtedness to us and to O. K. King & Co., New York, for whom we are agents. We hope there is sufficient water for him to ship now without difficulty. We are needing the money very much. Your Mr. R. M. B. can value on us for money to pay his expenses, and we will honor the drafts; hope he will attend to this at once. We enclose a letter to Col. Jones, which he can take with him.

Y'rs truly,

SUMMERS AND BRANNINS.

175 *Exhibit H to R. M. Butler's deposition.*

Mail.] NEW ORLEANS, *Feb'ry* 22, '68.

R. M. BUTLER, Esq.,
Yazoo City, Miss.:

DEAR SIR: We are duly in receipt of yours of 15th, & hope to hear from you in a few days the result of the sale of stock.

We rec'd 7 to-day from E. P. Jones.

We rec'd to-day a letter from our friends at Louisville in regard to supplies for your place. They say they can't undertake to furnish any supplies this season. We hope you will manage in some way to get along without calling for help—at any rate until you get your crop well under way. They may then be willing to help you a little; but the fact is, we were so thoroughly drained by planters last year and rec'd so little in return, that it would be folly to expect much from us this year. You are, however, one of the few we should like to make an exception of if we could.

We enclose a/c cur. of R. M. and B. Butler, showing balance to debits to 19th inst., $\$4.774\frac{69}{100}$. Please examine and report to us, if correct. We hardly think it worth while to spend more time hunting up Jones.

Y'rs, truly,

SUMMERS AND BRANNINS.

176 *Exhibit "I" to deposition of said R. M. Butler.*

NEW ORLEANS, 2 *April*, 1868.

Messrs. R. M. AND B. BUTLER,
Yazoo City, Miss.:

DEAR SIR: Your favors of 7th and 23rd ult. were duly rec'd. In all we rec'd from you the following drafts, say on—

M'ch	4.	D'ft	on	T. H. and J. M. Allen	for	.....	$500 00
"		"	"	Summers & B.	"	.....	17 50
"	13.	"	"	Richardson and May	"	.....	287 80
"	"	"	"	J. D. Nixon & Co.	"	.....	48 75
							$854 05

You will do the best you can with the remaining stock and plantation-implements.

By Saturday's boat we will send the pork for which you wrote, and we hope it will reach you in good season. We are disposed to do all in our power to help our friends, but we have so much locked up in the past season's business that we can give only small assistance. We cannot do anything, we regret to say, for Mr. Griffin.

We enclose a statement of Norval Garrison's a/c, showing balance to debit of $11.77.

We also enclose a deed of trust, which we would like you to have executed, recorded, and returned to us.

We are, y'rs truly,

SUMMERS AND BRANNINS,
P'r R. C. SMITH.

177 *Exhibit "M" to deposition of R. M. Butler.*

NEW ORLEANS, *Sept. 28th*, 1868.

Messrs. R. M. AND B. BUTLER,
Yazoo City, Miss'i :

GENTS: We are duly in receipt of y'rs of 25th, as also a letter addressed to the writer. Your pork has been ordered as requested. We think as long as cotton rules above 20 c. for mid'g it is best to meet the market, and hope you will let your cotton come forward as fast as possible; if the market should break down, and we consider it to your interest, we will hold it here where it will be safe under insurance.

We hope that you will give the writer (our Mr. S.) all the information in your power in regard to the rent of that Archer place, as he is perfectly in the dark and can hear nothing from it.

Y'rs, truly.

SUMMERS AND BRANNINS.

P. S.—If you can aid Mr. Mangum in our interest, hope you will do so.

Exhibit "N" to deposition of R. M. Butler.

NEW ORLEANS, *May 13th*, 1868.

Messrs. R. M. AND B. BUTLER,
Yazoo City, Miss. :

GENTS: We are duly in receipt of yours of 9th, and note con-
178 tents. Your draft for $175 has been presented and paid. We had also presented to-day a draft for $250, which we declined paying, as it was distinctly understood that you were not to call on us for anything more until you were advised that the house would sanction the further advances you required, they being entirely beyond what you wrote you would want in the first place.

We do not think you can calculate on our house making any further

advances, at any rate until something more definite is known about your crop prospects.

Y'rs, truly,

SUMMERS AND BRANNINS.

Exhibit "O" to deposition of R. M. Butler.

Dated NEW ORLEANS, *June 7th*, 1868.

"Received at Yazoo City, Miss."

To HARRISON AND HYATT:

For any supplies you furnish Butler we will give you preference in lien on their crop; will see you next week.

SUMMERS AND BRANNINS.

179 *Deposition of John Woolfolk in behalf of defendants.*

THE UNITED STATES OF AMERICA,
Southern District of Mississippi:

Circuit court. In chancery.

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } 81. N. S. In chancery.

Interrogatories to be propounded to John Woolfolk, a witness residing in Vicksburg, in the State of Mississippi, the answers to which, when taken, together with the interrogatories, will be offered in behalf of defendants in the above-entiled cause:

Int. 1st. State your occupation and place of residence during the year 1869, and particularly during the latter part of that year.

Int. 2nd. Do you know the parties litigant in this cause?

Int. 3rd. If you have stated that you had any agency for or business connections with complainants during that time, state the character and extent of such agency or connection.

Int. 4th. Did you receive for complainants, during the latter part of the year 1869, 15 bales of cotton from the defendants, or either of them, for complainants; if so, did you receive the cotton in your capacity as agent?

Int. 5th. Who had the possession and control of this cotton when it was delivered or transferred to you?

Int. 6th. State where and when it was transferred to you, the
180 circumstances attending the transfer, and the terms and conditions upon which it was delivered to you.

Int. 7th. State what disposition you made of this cotton.

Int. 8th. If you have answered that it was to be credited to defendants on complainant's claim against defendants, state particularly if it was not understood and agreed at the time the cotton was transferred to you that it was to be credited to the defendants, Roach's, on their notes to complainants, and that it was not to be placed as a credit on the general or open accounts of complainants with the Butlers.

Int. 9th. State who gave you control of the cotton; and state all that was said in reference to the transfer of the cotton, and the particular appropriation of the proceeds by either of the Roach's or the person who acted for them and yourself.

Int. 10th. Did you have authority from complainants to receive the cotton?

Int. 11th. State anything else you may know of advantage to complainants or defendants.

WILKINSON AND BOWMAN,
For Def'ts, Roach's.

Cross-interrogatories to be propounded to John Woolfolk:

Cross-interrogatory 1st. In your answers to the foregoing interrogatories, state whether or not the same is made of your own knowledge, or from information derived from others; if from information derived from others, state what portion of said answers is made from such information, and what from your own knowledge.

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Cross-inter'y 2nd. If you know anything else material to the interest of the parties to this suit, relative to the matters in controversy herein, state it.

W. AND J. R. YERGER.

We agree that the deposition of the above-named witness may be taken on the foregoing interrogatories and cross-interrogatories before any U. S. comm'r or other qualified officer, waiving service of notice and issuance of commission, but reserving all exceptions as to competency and relevancy of witness and evidence, and to the admissibility of the deposition when taken.

Jan'y 21st, 1871.

W. AND J. R. YERGER.
Sol's for Complainants.

Answers to foregoing interrogateries and cross-interrogatories, to wit:

Ans. 1. I was merchandising in Vicksburg during the year 1869, and certainly during the latter part of that year.

Ans. 2. I know Summers and Brannins, and Eugene Roach, but don't know what parties are referred to by the words "et al."

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Ans. 3. I had no connection with complainants' concerns, except that I was doing business with them as my cotton-factors and soliciting shippings to their house.

Ans. 4. I do not recollect having received 15 bales of cotton from defendants, or either of them, during the latter part of 1869, for complainants.

Ans. 5. The cotton was attached and sold, and was bought by me, and delivered to me by the constable.

Ans. 6. It was transferred to me in Vicksburg, I think, in the latter part of 1869. It was sold under an attachment, as I remember, gotten out by Eugene Roach for benefit of Summers and Brannins. It was delivered to me under an absolute sale, and upon payment of purchase-money in cash.

Ans. 7. The purchase was made by Mr. Vernon and myself, and we shipped the cotton to New Orleans and sold it there.

Ans. 8. I made no agreement concerning complainants or defendants with regard to the said cotton.

Ans. 9. I have stated that the cotton was put under my control by the constable. Nothing was said by either of the Roach's, or any one acting for them or myself, with reference to the transfer of the cotton or the appropriation of it.

Ans. 10th. I would have felt myself authorized to receive the cot-
183 ton if had been turned over to me, as I was doing business with complainants.

Ans. 11th. I don't know the nature and object of this suit, and cannot state anything that I know to be of advantage to either complainants or defendants.

Answers on cross-interrogatories

Ans. 1. The answers to the foregoing interrogatories were made from my own knowledge, and according to the best of my recollection.

Ans. 2. I don't know anything else relative to the matters in controversey herein, material to the parties to this suit.

JNO. H. WOOLFOLK.

Sworn to and subscribed before me this the 24th day of January, A. D. 1871.

H. N. MARTIN, *J. P.* [SEAL.]

And on the final hearing of said cause the following depositions were offered and read to said court as evidence in behalf of Eugene Roach and Naylor Roach, two of the defendants in said cause, to wit:

Deposition of R. M. Butler.

UNITED STATES OF AMERICA:

The President of the United States of America to R. B. Mayes, esq'r, United States commissioner for the southern dist. of Mississippi, greeting:

184 Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine Robert M. Butler, on his corporal oath, as a witness in a cause depending in equity in the circuit court of the United States for the southern district of Mississippi, at Jackson, in said district, wherein Summers and Brannins are complainants, and Eugene Roach and others are defendants, on the part of Eugene Roach and Naylor Roach, two of the said defendants, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded, at a certain day and place to be appointed by you, you do cause the said Robert M. Butler to come before you, and then and there examine him on oath touching the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into the circuit court of the United States for the southern district of Mississippi, at Jackson, in said district, before the judges thereof, with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme court of the United States, and the seal of said circuit court, at Jackson, in said district, this 24th day of February, A. D. 1870.

[L. S.] GEO. T. SWANN, *Clk.*

185 Interrogatories to be propounded to Robert M. Butler, of Yazoo County, Mississippi, which, together with the answers thereto, when taken, are to be read as evidence on the part of Eugene Roach

and Nailor Roach, two of the defendants in certain suits now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, on the equity side thereof, wherein Summers and Brannins are complainants, and Eugene Roach et als. are defendants:

Int. 1st. Are you acquainted with the parties to this suit?

Int. 2nd. State fully and particularly all you know in regard to the making of two several promissory notes made by you, Brevoort M. Butler, Eugene Roach, and J. N. Roach, deceased, payable to complainants, for twenty-five hundred dollars each, due the 15th day of October and the 5th day of November, 1867, and dated the first day of February, A. D. 1869.

Int. 3rd. State whether or not, at the time said notes were made, if there was any agreement that all the cotton shipped and to be shipped by you and your codefendant, Brevoort M. Butler, for the year 1867, as well as for subsequent years, was to be sold and the proceeds thereof applied by complainants to the payment of said notes in preference to any other debts against you.

Int. 4th. State whether or not it was agreed between you and
186 complainants, at the time said notes were made, that all moneys received from you and your codefendant, Brevoort M. Butler, from the sale of cotton, as well as from other sources, was to be applied to the payment of said notes.

Int. 5th. State fully and particularly all the moneys paid by you and others on said notes.

Int. 6th. State whether or not, at the time said notes were made, if it was stipulated and agreed between you, the Roach's, and complainants, that the said Eugene Roach and J. W. Roach were to be liable for any further or other amount than said notes; and if it was not agreed that said Summers and Brannins should advance you only to the amount of said notes.

Int. 7th. State fully all that occurred or was agreed upon between the parties at the time said notes were made.

Int. 8th. State the amount of cotton, and its value, shipped by you to said Summers and Brannins in the year 1867, and each subsequent year.

Int. 9th. State whether or not you and Brevoort M. Butler, on the one part, and complainants on the other, entered into and executed on the 19th of February, 1867, an agreement, a copy of which is marked Exhibit No. 1, to defendant's, Eugene Roach's, answer; and, if so, did you Engene Roach have any knowledge thereof at the time? Annex to and make part of this answer a copy of said agreement entered into by you, Brevoort Butler, and complainants, on said date, and
187 mark it Exhibit A to your answer.

Int. 10th. Did not you and Brevoort M. Butler execute a certain instrument of writing, dated 2nd April, 1868, to J. J. B. Hilliard, trustee, for benefit and use of complainants, conveying to said trustee all your crop of cotton for the year 1868, a copy of which is marked No. 7, to said defendant, Eugene Roach's, answer; and, if so, at whose request? Was it not done by agreement between you and complainants without the consent of said Eugene Roach? If you can, annex to your answer a true copy of said instrument of writing as Exhibit B to this answer.

Int. 11th. State whether or not you have seen all the exhibits to defendant, Eugene Roach's, answer in this cause; and, if so, are they not all true and correct copies?

Int. 12th. Was or not Eugene Roach and J. N. Roach only sureties on the aforesaid notes in the 2nd interrogatory mentioned?

Int. 13th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subjects of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WILKINSON AND BOWMAN,
For E. Roach.

188 SUMMERS AND BRANNINS *vs.* E. ROACH ET AL. } N. S. 81. In c'h'y.

Cross-interrogatories to Brevoort M. Butler:

X-int. 1. If you say there was any agreement of the kind referred to in the 3rd interrogatory-in-chief, state when it was made; the particular date and year; whether before or after the notes and mortgage referred to in this case were made; with whom and by whom said agreement was made; where it was made, and who was present when it was made.

X 2nd. If you say there was any agreement of the kind referred to in the 4th int.-in-chief, state at what time it was made; the particular day and year; whether before or after the notes and mortgage made by the Roach's were executed; with which of complainants it was made; where it was made, and who was present when it was made.

X-int. 3rd. If you state that there was any stipulation of the kind referred to in the 6th int.-in-chief, state where such stipulation was made; with which of complainants it was made; who was present when it was made, and on what particular date and year it was made, and whether before or after the notes were executed; and if there was any stipulation limiting the amount of advances to you, state if such stipu-

189 lation was not simply to the effect, and insisted upon by Summers and Brannins, that they should not be required to make advances to you beyond the amount of the notes—not that they should not make such advances if they saw fit to do so. In fact, was not such stipulation made by Summers and Brannins for their protection only; to limit the amount you should have a right to require or demand, and not a limitation on their right or power to make you further advances, if they saw fit? In short, were you not very urgent to obtain advances, and were not Summers and Brannins both to advance except to a limited amount; was there not at the time great difficulty in getting merchants to make advances to planters at all about that time?

X-int. 4th. If you undertake to speak of the value of the cotton you sent to Summers and Brannins, state what you mean by its value, whether its cash marketable value or not; and, if so, in what market do you fix its value? State particularly what kind of cotton you sent to Summers and Brannins; whether it would class as inferior, ordinary, middling, good middling, or fair, and how many bales of each cotton you sold them. Also state what was the market value of cotton of these several grades in New Orleans at the time your cotton was received by Summers and Brannins; when it was sold by them; and between the date of its receipt by them and its sale.

190 X-int. 5th. State what were the nature and character of the services rendered by you for complainants on a/c of Col. E. P. Jones; what time you were occupied in rendering such services, and

by whom and when and where you were employed in rendering them; and if you ever informed complainants, or either of them, of your charge for such services, or rendered them any account for the same; if so, when and how. Answer the same questions relative to your claim for services on a/c of C. T. Ingersoll.

X-int. 6th. What seven mules of complainant's do you refer to in your a/c marked Exhibit A to your answer; how did they come into your possession, and for what purpose and how long did you have them? What medicines did you furnish for the sick mules; what kind of medicine was it; how much did you furnish; from whom did you get it, and what did you pay for it?

X-int. 7th. What two mules do you refer to in your a/c of date 1st June, 1869? How did they come into your possession; for what purpose did you have them? Who did they belong to? What care did you take of them? Where did you keep them? Were they used by you, or any one on the place occupied by you, in raising the crop or in any other way? If so, how were they used; why were they not used? What has become of these two mules, and also of the seven mules referred to? State how, why, and in what way, and for what purpose you ever took into your possession any mules belonging
191 to complainants, and from whom you received them; and what have you done with the mules referred to in your account; where are they now?

X-int. 8th. What was the nature and character of the "additional" services during 18 months, charged in your account? In what way, and where did you render such services? How long were you occupied in rendering them? Who retained you, and when and where, to render such services? Have you ever claimed for such services before filing the account with your answer; if so, when and where did you make such claim? State in what business you were engaged in 1867 and 1868; whether or not you were employed by complainants to attend to any business for them; if so, what business, and where were you employed, and by whom, and for what length of time.

YERGERS,
Sol's for Compl'ts.

Notice waived and commission to issue in blank Feb'y 12th, 1870.
W. YERGER,
Sol. for Compl'ts.

Filed by sol's for E. Roach, def't, with waiver of notice by W. Yerger, sol. for compl'ts, Feb'y 12th, 1870.

GEO. T. SWANN, *Clk.*

SOUTHERN DISTRICT OF MISSISSIPPI, *ss:*

I, Geo. T. Swann, clerk of the circuit court of the United States for said district, do certify that the foregoing six and the above portion of this (7th) page contain a true copy of the interrogatories and cross-interrogatories to Robert M. Butler, a witness for defendants,
192 Eugene and Nailor Roach, in the case therein stated, together with the agreement of counsel endorsed thereon, as the same remain on file in said cause.

Given under my hand and seal of said court at Jackson, in said district, this 24th day of February, A. D. 1870.

[L. S.] GEO. T. SWANN, *Clerk.*

I, Robert B. Mayes, United States commissioner for the southern district of Mississippi, in the county of Yazoo, do hereby certify that, by virtue of the commission hereto attached, I did, on Monday, the eighth day of March, A. D. 1870, examine Robert M. Butler, on his corporal oath, as a witness in a cause depending in equity in the circuit court of the United States for the southern district of Mississippi, at Jackson, in said district, wherein Summers and Brannins are complainants, and Eugene Roach and others are defendants, on the part of Eugene Roach and Nailor Roach, two of the said defendants, upon the interrogatories annexed to said commission. And said Robert M. Butler, having been by me first duly sworn according to law, to the interrogatories-in-chief answers as follows:

Interrogatory 1st. Are you acquainted with the parties to this suit?

Answer. I am.

Interrogatory 2. State fully and particularly all you know in re-
193 gard to the making of two several promissory notes, made by you, Brevoort M. Butler, Eugene Roach, and J. W. Roach, deceased, payable to complainants, for twenty-five hundred dollars each, due the 15th day of October, and the 5th day of November, 1867, and dated the first day of February, A. D. 1867.

Answer. Two notes of that description were executed by the persons mentioned, for and in consideration of supplies which were to be advanced by the complainants to Robert M. Butler and Brevoort Butler, for the year 1867.

Interrogatory 3. State whether or not, at the time said notes were made, if there was any agreement that all the cotton shipped and to be shipped by you and your codefendant, Brevoort M. Butler, for the year 1867, as well as for subsequent years, was to be sold, and the proceeds thereof applied by complainants to the payment of said notes in preference to any other debts against you?

Answer. There was such an agreement.

Interrogatory 4th. State whether or not it was agreed between you and complainants, at the time said notes were made, that all moneys received from you and your codefendant, Brevoort M. Butler, from the sale of cotton, as well as from other sources, was to be applied to the payment of said notes?

Answer. It was agreed that all moneys so received should be applied to the payment of the notes until they should be fully paid.

194 Interrogatory 5. State fully and particularly all the moneys paid by you and others on said notes.

Answer. I have not with me the necessary data to enable me to give a detailed and accurate account of all the moneys so paid; but this will appear from complainants' account of sales, on file with the papers in this cause. The following statement is as full and accurate as I am able now to make: The proceeds of the sales of cotton for 1867 were thirteen hundred and eighteen 59-100 dollars. We shipped them, in 1868, twenty-six tied bales, which should have brought at least three thousand two hundred and fifty dollars, ($3,250;) also the proceeds of fifteen bales of cotton, attached by Eugene Roach and the proceeds turned over to the complainants, amounting to twelve hundred and sixty-nine 52-100 dollars. My brother, Brevoort Butler, and I were entitled to a further credit of fourteen hundred and eighty dollars. The twenty-six bales alluded to were sold by the complainants for only twenty-four hundred 56-100 dollars.

Interrogatory 6. State whether or not, at the time said notes were made, if it was stipulated and agreed between you, the Roach's, and

complainants that the said Eugene Roach and J. W. Roach were to be liable for any further or other amount than said notes, and if it was not agreed that said Summers and Brannins should advance you only to the amount of said notes.

195 Answer. The agreement between all the parties was that Eugene and J. W. Roach should not be liable for any further or other amount than was secured by said notes; and the complainants were to advance no more than that amount.

Interrogatory 7. State fully all that occurred or was agreed upon between the parties at the time said notes were made.

Answer. It was agreed that Eugene and J. W. Roach should become responsible to the complainants for R. M. and Brevoort Butler, to the amount of five thousand dollars. The Roach's signed the notes, and executed a mortgage on land to secure the payment of them.

Interrogatory 8. State the amount of cotton, and its value, shipped by you to the said Summers and Brannins in the year 1867, and each subsequent year.

Answer. The amount of cotton shipped in 1867 was twenty-nine heavy bales, equal to thirty-one average bales or more, worth at least fifteen hundred and fifty dollars, but sold for thirteen hundred and eighteen $\frac{59}{100}$ dollars. The amount shipped in 1868 was twenty-six ties, worth three thousand two hundred and fifty dollars, but sold for twenty-four hundred $\frac{56}{100}$ dollars. Also fifteen ties, worth at least fifteen hundred dollars, but sold for twelve hundred and sixty-nine $\frac{52}{100}$ dollars.

Interrogatory 9th. State whether or not you and Brevoort M.

196 Butler on the one part, and complainants on the other, entered into and executed on the 19th of February, 1867, an agreement, a copy of which is marked Exhibit No. 1, to defendant, Eugene Roach's answer; and, if so, did you Eugene Roach have any knowledge thereof at the time? Annex to and make part of this answer a copy of said agreement entered into by you, Brevoort Butler, and complainants on said date, and mark it Exhibit A to your answer.

Answer. Brevoort Butler and I on the one part, and the complainants on the other, entered into an agreement the 19th of February, 1867, of which Eugene Roach had no knowledge at that time. A copy of said agreement is hereto attached, marked Exhibit A and made a part of this answer.

Interrogatory 10. Did not you and Brevoort M. Butler execute a certain instrument of writing, dated 2nd of April, 1868, to J. J. B. Hilliard, trustee, for benefit and use of complainants, conveying to said trustee all your crop of cotton for the year 1868, a copy of which is marked No. 7 to said defendant Eugene Roach's answer; and, if so, at whose request? Was it not done by agreement between you and complainants, without the consent of said Eugene Roach? If you can, annex to your answer a true copy of said instrument of writing as Exhibit B to this answer.

Answer. We did execute such an instrument of writing, at the

197 request of the complainants. It was done between us and complainants, without the consent of Eugene Roach. I am unable to procure a copy to make an exhibit to this answer; but a copy is filed with the complainants' bill of complaint, marked Exhibit "D."

Interrogatory 11. State whether or not you have seen all the exhibits to defendant Eugene Roach's answer in this cause; and, if so, are they not all true and correct copies?

Answer. I have seen all of those exhibits, and believe them to be true and correct copies.

Interrogatory 12. Was, or not, Eugene Roach and J. W. Roach only sureties on the aforesaid notes in the second interrogatory mentioned?

Answer. They were only sureties on said notes.

Interrogatory 13. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

Answer. I can think of nothing to add to what I have answered to previous interrogatories.

And to the cross-interrogatories he answers:

X-interrogatory 1. If you say there was any agreement of the kind referred to in the 3rd interrogatory-in-chief, state where it was
198 made, the particular date and year; whether before or after the notes and mortgage referred to in this case were made; with whom and by whom said agreement was made; where it was made, and who was present when it was made.

Answer. The agreement was made in New Orleans, the nineteenth day of February, 1867, after the notes and mortgage were executed, with a member of the firm of Summers and Brannins, by me, acting for R. M. and B. Butler, in the office of Summers and Brannins, and witnessed by R. C. Smith and W. N. Henderson.

X-interrogatory 2. If you say there was any agreement referred to in the 4th interrogatory-in-chief, state at what time it was made, the particular day and year; whether before or after the notes and mortgage made by the Roach's were executed; with which of complainants it was made; where it was made, and who was present when it was made.

Answer. The agreement was made the first of February, 1867, at the time the notes were made; with which of the complainants I do not remember, but think that Mr. Summers and one of the Brannins were present. It was made in the office of the complainants, in New Orleans; J. W. Roach was present; the clerks in the store and other persons were passing and repassing. Eugene Roach was not present, but signed the notes afterwards. There was no written agreement made that
199 day, but the understanding between all parties was as stated in my answer to the fourth interrogatory-in-chief.

X-interrogatory 3. If you state that there was any stipulation of the kind referred to in the 6th int.-in-chief, state where such stipulation was made; with which of complainants it was made, who was present when it was made, and on what particular date and year it was made, and whether before or after the notes were executed, and if there was any stipulation limiting the amount of advances to you; state if such stipulation was not simply to the effect, and insisted upon by Summers and Brannins, that they should not be required to make advances to you beyond the amount of the notes, not that they should not make such advances if they saw fit to do so; in fact, was not such stipulation made by Summers and Brannins for their protection only; to limit the amount you should have a right to require or demand, and not a limitation on their right or power to make you further advances if they saw fit; in short, were you not very urgent to obtain advances, and were not Summers and Brannins loath to advance, except to a limited amount; was there not at the time great difficulty in getting merchants to make advances to planters at all about that time?

Answer. The stipulation alluded to was made in the office of the complainants, in New Orleans, with the cognizance of all the com-
200 plainants, but with which particular one or two I do not now re-

member. J. W. Roach, the clerks, and other persons were present part of the time. Various persons were entering and departing. The matter was the subject of consideration between the parties for several days, but I fix the date at the time of executing the notes, the first of February, 1867. The stipulation required Summers and Brannins to make advances to the amount of five thousand dollars, and made the Roach's liable for the advances to that amount. Farther advances were not mentioned, for it was not then expected that further advances would be needed. The stipulation was for the protection alike of the complainants and the Roach's, to fix the amount of advances to be made by the former and the amount of the liability of the latter, with which view the Roach's executed the notes as sureties for R. M. and B. Butler. The stipulation did not prevent, nor was intended to prevent, the complainants from making further advances, if they thought fit to do so, on the responsibility of R. M. and B. Butler. I was very anxious to get advances, but thought five thousand dollars would be sufficient. Summers and Brannins were loath to advance, except to a limited amount, and the amount was accordingly limited to five thousand dollars. There was great difficulty in getting merchants to make advances to planters at that time.

201 X-interrogatory 4. If you undertake to speak of the value of the cotton you sent to Summers and Brannins, state what you mean by its value; whether its cash marketable value or not; and, if so, in what market do you fix its value; state particularly what kind of cotton you sent to Summers and Brannins; whether it would class as inferior, ordinary, middling, good-middling, or fair, and how many bales of each cotton you sold them; also state what was the market value of cotton of those several grades in New Orleans at the time your cotton was received by Summers and Brannins, when it was sold by them, and between the date of its receipt and its sale?

Answer. By the value of the cotton, I mean its marketable value in the New Orleans market. In 1867 I sent Summers and Brannins twenty-four bales (ties) of middling cotton; five of low-middling. In 1868 I shipped them, about the 15th of September, three bales, (ties;) October 10th, eight bales, (ties;) October 31, fifteen bales, (ties;) November 30, fifteen were turned over to them by Eugene Roach—all middling. I do not know the dates when the cotton of 1867 was received, and consequently cannot give the prices. According to a chart of prices in New Orleans, published in Memphis, the market-price was, from September 10 to 17, 1868, 24½ to 23½; Oct. 8th to 15th, 23½ to 23¼; October 29 to November 5, 23½ to 24.

202 Interrogatory 4. State what were the nature and character of the services rendered by you for complainants on ⅜ of Co'l E. P. Jones; what time you were occupied in rendering such services, and by whom, and when, and where you were employed in rendering them; and if you ever informed complainants, or either of them, of your charge for such services, or rendered them any account of the same; if so, when and how. Answer the same questions relative to your claim for services on ⅜ of C. J. Ingersoll.

Answer. The services rendered on ⅜ of E. P. Jones consisted getting him to ship cotton to Mess. Summers and Brannins, as agents for Messrs. O. K. King & Co., New York, to meet his obligations to them. I made one trip to his place, which occupied about eight days, but failed to see him there; ascertained from the overseer that he had about forty bales of cotton on the place, but not ready for shipment. I afterwards saw Co'l Jones at Tchula, and received his assurance that he would im-

mediately ship the cotton; was informed afterwards by the complainants that he had shipped only ten bales. The transaction occupied about two weeks. In compliance with instructions from them, I kept Co'l Jones "stirred up" about the matter, and wrote frequently to them. I was first employed in New Orleans, about the last of December, 1867, by Mr. E. H. Summers, verbally. Soon after, received written instructions from the firm of Summers and Brannins with reference to the business with Co'l Jones; afterwards received written instructions in
203 regard to the business of J. C. Ingersoll, together with a deed of trust and an endorsement thereon, appointing me trustee. I rendered my account to Mr. E. H. Summers, in complainants' office, in New Orleans, about the last of November, 1868, and requested a credit to that amount, and that the notes should be given up. He refused to allow the account or deliver up the notes. In the Ingersoll matter, I was instructed by letter, dated January 23, 1868, from the complainants, requesting me to go up and take possession of the property, which I did, leaving it in charge of Mr. Griffin, according to instructions, until the day of sale. I advertised the property for sale, went up again, having first received from complainants a letter, dated February 13, 1868, with specific instructions as to the sale and further disposition of the stock. On my second trip I was occupied about four days. I corresponded frequently with the complainants, reporting my action and remitting proceeds of such property as was sold. I also rendered an account to Mr. E. H. Summers for the services at the same time, and with the same result, up to that date. I have not yet been relieved of the Ingersoll business, and claim additional pay from that date for subsequent services.

X-interrogatory 6. What seven mules of complainants do you refer to in your a/c marked Exhibit "A" to your answer; how did they
204 come into your possession, and for what purpose, and how long did you have them; what medicines did you furnish for the sick mules; what kind of medicine was it; how much did you furnish; from whom did you get it, and what did you pay for it?

Answer. The seven mules were the property of C. J. Ingersoll, conveyed by deed of trust to secure the complainants; I took possession of them by virtue of the deed of trust, and under instructions from the complainants. The seven were not sold with the other property, but were kept by me in order that they might bring an average price. I have one of them yet, and had the others for different lengths of time. Some died, others were sold; all were reported and accounted for. The medicines generally were purchased from Gadberry, Dyer & Co., in Yazoo City, being the various remedies then recommended for charboned and other diseases. Some was purchased from Dr. Parberry, a veterinary doctor then in Yazoo City. I cannot state the exact cost of the medicines used on those seven mules, because I purchased the medicines and used them indiscriminately for those mules and my own.

X-interrogatory 7. What two mules do you refer to in your a/c of date 1st June, 1869? How did they come into your possession; for what purpose did you have them; who did they belong to? What care did you take of them; where did you keep them? Were they used by you,
205 or any one on the place occupied by you, in raising the crop or in any other way? If so, how were they used; why were they not used? What has become of these two mules, and also of the seven mules referred to? State how, why, and in what way, and for what purpose, you ever took into your possession any mules belonging to complainants, and from whom have you received them, and what

have you done with the mules referred to in your account. Where are they now?

Answer. The two mules alluded to are two of the seven previously alluded to. They came into my possession under the deed of trust before mentioned, and for the purpose already stated. They belonged to C. J. Ingersoll till conveyed in trust by said deed. I took such care of them as of my own stock, which was such as a prudent and humane person would give. I kept them with my stock on the place I was cultivating. They were used on the place like my own stock, but I had plenty of mules and horses for my hands without them, and only used them to have them the better cared for. One of these mules died in 1869, and was duly reported; the other is still in my possession or custody. The other five died or were sold, as before stated. I took all of the mules which came into my possession for the benefit of the complainants, as trustee, to be sold for the payment of a debt due them from C. J. Ingersoll, from whom I received them through Samuel Griffin. Three
206 were sold, three died, one is still in my custody. All would have been sold but for a limitation as to price, imposed by the complainants in one of the letters before alluded to. Two of those letters are hereto attached, and marked, respectively, "Exhibit 2" and "Exhibit 3."

X-interrogatory 8. What was the nature of the "additional charges during 18 months," charged in your account? In what way and where did you render such services? How long were you occupied in rendering them? Who retained you, and when and where, to render such services? Have you ever claimed for such services before filing the account with your answer; if so, when and where did you make such claim? State in what business you were engaged in 1867 and 1868; whether or not you were employed by complainants, and where were you employed, and by whom, and for what length of time?

Answer. The additional services were a continuation of the services before mentioned, as trustee, and soliciting shipments of cotton for the complainants. The services as trustee were in Yazoo County; in soliciting, in Yazoo, Holmes, Sunflower, and Tallahatchie Counties. I was occupied from the last of December, 1868, from time to time, and I have not yet been relieved from duty. The complainants retained me by the letters from New Orleans before alluded to, two of which are
207 hereto affixed as exhibits. I did not claim for the additional services before filing my account with my answer, because they had refused payment of the prior services. I was engaged in 1867 and 1868, in planting, and as agent for an insurance company and for merchants. I was employed by the complainants for no limited time, to attend to business for them as already shown.

And further this deponent saith not.

R. M. BUTLER.

EXHIBIT 1.

[5-cents stamp.]

THE STATE OF MISSISSIPPI,
County of Yazoo:

We, Summers and Brannins, a commercial firm of the city of New Orleans, State of Louisiana, have this day entered into the following trade-contract and agreement with R. M. and B. Butler; that is to say: The said R. M. and B. Butler are engaged in the cultivation of a crop

of cotton and other products on the Roach plantation in said county, but find it necessary, in order to enable them to complete it, to procure certain supplies and certain monies for their said plantation. The said Summers and Brannins are willing and agree to advance said supplies to the extent of five thousand dollars, and in consideration thereof, and as an inducement thereto, the said R. M. and B. Butler agree and contract that said Summers and Brannins shall have an interest in said crop of cotton to the extent and number of bales, average
208 weight when ginned and packed; and said R. M. and B. Butler further agree and bind themselves, in consideration of the premises, to ship the said Summers and Brannins, at New Orleans, La., the said bales of cotton, as well as all the balance of their said crop of cotton.

And the said R. M. and B. Butler further agree and bind themselves to pay to said Summers and Brannins 2½ per cent. commission for advancing, and 10 per cent. interest thereon until paid, and the usual commission for selling their said cotton.

In testimony whereof we have hereunto set our hands and fixed our seals this 19th day of February, A. D. 1867.

(Signed) R. M. AND B. BUTLER.
SUMMERS AND BRANNINS.

Witness:
R. C. SMITH,
W. N. HENDERSON.

And I, the said R. B. Mayes, United States commissioner as aforesaid, also certify that said deposition was carefully read over by said R. M. Butler, corrected and signed in my presence; that it has remained in my custody until by me sealed up, addressed to "the judges of the circuit court of the United States, Jackson, Mississippi," and deposited in the post-office at Yazoo City.

In testimony whereof I have hereunto set my hand the 8th day of March, A. D. 1870.

R. B. MAYES,
U. S. Commissioner.

209 Exhibits to foregoing deposition of R. M. Butler are as follows, to wit:

(Exhibit "A" referred to in the answer to the 9th direct interrogatory is the same as Exhibits 1, referred to in that interrogatory, and is copied on p. p. 207 & 208.—*Clk.*)

Exhibit No. 2 is as follows:

NEW ORLEANS, *Jan. 23rd*, 1868.

R. M. BUTLER, Esq.,
Yazoo City, Miss.:

D'R SIR: We enclose you herewith "deed of trust" from Ch's J. Ingersoll to us with a substitution to you as trustee in place of J. J. B. Hilliard.

We also enclose you an order from Ch's J. Ingersoll on Sam'l Griffin for the delivery of the stock, &c.

You will please go up and take possession of the property at once, but leave it with Mr. Griffin, if the corn that Ingersoll left there is not exhausted; if it is, please send them to your own place. You can advertise and sell them on 10 days' notice instead of 30, as he has waived.

If any one will bid the amount of our debt for the property, say $1,517, let it go; otherwise buy it in for us at the lowest price you can.

We have your letter from Greenwood, Jan. 18th. Hope you succeeded in getting hold of Co'l Jones' cotton. You will please keep him stirred up, and get every bat of cotton you can.

Y'rs truly,

SUMMERS AND BRANNINS.

EXHIBIT No. 3.

NEW ORLEANS, *Feb'y* 13, 1868.

R. M. BUTLER, Esq'r.,
Yazoo City, Miss'i:

D'R SIR: We have several of your favors, the last dated 8th inst.

You will close the sale to Griffin on the terms proposed if you think it best, and we suppose it is a fair offer under the circumstances.

The balance of the mules you will sell, as advertized, and if they bring anything like a fair price, say $75 to $100, let them go; otherwise buy them in for us and take them down to your place and hold them there for further orders, or sell them as you can. Our object is to make them come as near paying our debt as possible. The wagon we think you had best sell, if it will bring anything near its value.

We will attend to your order for Mr. Garrison. We fear Co'l Jones is all promise and no pay. We have not rec'd any cotton from Mr. Waller yet.

We have written to Louisville about your pork, hope they will send it; if not, you will hear from them.

Y'rs truly,

SUMMERS AND BRANNINS.

211 *Deposition of Eugene Roach.*

The President of the United States of America to R. R. Mayes, esquire, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents are invested with full power and authority, to examine Eugene Roach, on his corporal oath, as a witness in a cause depending in the circuit court of the United States for the southern district of Mississippi, at Jackson, in said district, wherein Summers and Brannins are complainants, and Eugene Roach and others are defendants, on the part of Eugene Roach and Nailor Roach, defendants, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that, at a certain day and place to be appointed by you for that purpose, you do cause the said Eugene Roach to come before you, and then and there examine him on oath touching said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into the said circuit court, before the judges thereof, with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and seal of said court, at Jackson, in said district, this 5th day of March, A. D. 1870.

[L. S.] GEO. T. SWANN, *Clerk.*

212 (Copy.)

Interrogatories to be propounded to Eugene Roach, of Yazoo County, Mississippi, which, together with the answers thereto, when taken, are to be read as evidence on the part of defendants, Eugene Roach and Nailor Roach, in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, on the equity side thereof, wherein Summers and Brannins are complainants, and Eugene Roach and others are defendants.

Int. 1st. State whether or not you are acquainted with the parties to this suit.

Int. 2nd. State whether or not you ever had any conversation with the complainants, or any or either of them, or with any of their clerks or employees, in regard to the notes mentioned in complainants' bill as having been made by R. M. Butler, Brevoort Butler, yourself, and J. W. Roach, deceased, in his life-time, to complainants, on the day of February, 1867; and, if so, state when and where said conversation was held. State fully all that was said at the time. Were you at the time talking about these notes, or some other note or notes?

Int. 3rd. Were you well acquainted with complainants, or either of them, and did you ever, before the 28th of June, 1869, or since, have any conversation or interview with them on any subject? And, if so, state how often, when, and where.

213 Int. 4. If you ever had any conversation with complainants, or either of them, or any employee of theirs, in regard to said notes in said bill of complaint mentioned, then state whether it was before or after you of the agreement between complainants and R. M. and Brevoort Butler, of 19th of February, 1867, marked Exhibit No. 1, to your answer in this case, and the trust-deed by said Butlers to Hilliard, trustee, for use of complainants, dated 2d April, 1868, marked Exhibit No. 7 to your said answer. State when and where you first knew or heard of said agreement and trust-deed in this interrogatory mentioned. Were they, or either of them, made with the knowledge or consent of yourself or J. W. Roach, deceased, in his life-time?

Int. 5. Were you and J. W. Roach in his life-time sureties on said notes in complainants' bill mentioned?

Int. 6. State, if you know, what was the agreement between the parties to said notes in complainants' bill mentioned, in regard to the payment thereof.

Int. 7. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WILKINSON AND BOWMAN,
For Deft's Roach.

Filed February 24th, 1870. Geo. T. Swann, clerk.

214 Cross-interrogatories to Eugene Roach in the case of Summers and Brannins vs. Eugene Roach et al.

1st cross-inter'og. If you say in answer to 6th direct interrogatory that there was any agreement of the kind referred to therein, state when said agreement was made, with whom it was made, who was

present when it was made; also state whether it was verbal, or in writing; if in writing, where is the writing? If verbal, state the precise words used. Also state whether it was before or after the execution of the notes and mortgage by yourself and J. W. Roach.

2nd cross inter'og. Did not Summers and Brannins make the advances in money and supplies to R. M. and Brevoort Butler at the request of yourself and J. W. Roach, or of one of you; and was it not on your credit, and not on the credit of the Butlers, that the advances were made?

3d cross-int. Did not the Butlers rent land of you and J. W. Roach, and did you not get Summers and Brannins to make the advances in order to enable the Butlers to cultivate the place, and thus pay you rent for the same; and was it not an agreement between you and the Butlers when they rented the land from you that you would procure some commission-merchant to advance money and supplies to carry on the plantation?

4th cross-int. If you speak of any conversations with the complainants, or either of them, state when and where such conversations
215 occurred, and who was present at the time; also state the exact language used in such conversations.

W. AND J. R. YERGER,
For Compl'ts.

Filed March 4, 1870. Geo. S. Swan, cl'k.

SOUTHERN DISTRICT OF MISSISSIPPI, *ss:*

I, Geo. T. Swann, clerk of the circuit court of the United States for said district, hereby certify that the foregoing 3 pages and the above portion of this page contain a full and true copy of the interrogatories and cross-interrogatories to the witness, Eugene Roach, in the case therein stated, as the same remain on file in said cause.

Given under my hand and seal of said court, affixed at Jackson, in said district, this 5th day of March, A. D. 1870.

[L. S.] GEO. T. SWANN, *Clerk.*

In the circuit court of the United States for the southern district of Mississippi.

IN THE CASE OF SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } In chancery.

By virtue of a commission hereto annexed, I, Robert Mayes, United States commissioner for the district aforesaid, in the county of Yazoo, caused Eugene Roach to come before me the 28th day of March,
216 A. D. 1870, at my office in the town of Yazoo City, in said county, district, and State, and then and there examined him on oath touching the interrogatories and cross-interrogatories annexed to said commission.

And to the said interrogatories the said Eugene Roach answers as follows:

Interrogatory 1. State whether or not you are acquainted with the parties to this suit.

Answer. I am acquainted with them, except Mr. Brannins and Mr. Newcomb, and I have met casually with the former.

Interrogatory 2. State whether you ever had any conversation with the complainants, or any or either of them, or with any of their clerks or employees, in regard to the notes mentioned in complainants' bill as having been made by R. M. Butler, Brevoort Butler, yourself, and J. W. Roach, deceased, in his life-time, to the complainants, on the day of February, 1867; and, if so, state when and where said conversation was held. State fully all that was said at the time. Were you at the time talking about these notes, or some other note or notes?

Answer. I never had any such conversation.

Interrogatory 3. Were you well acquainted with complainants, or either of them; and did you ever, before the 28th of June, 1869, or since, have any conversation or interview with them on any subject? And, if so, state how often, when, and where.

Answer. I was not well acquainted, personally, with any of the
217 complainants, though I have had a business correspondence with them. Before June, 1869, I conversed with Mr. Summers about my business transactions with the firm of which he is a member. At that time I executed my note to the firm for fifteen hundred dollars, for planting facilities on my own account. In that interview the fact was mentioned that R. M. Butler had not shipped his cotton to Summers and Brannins. I do not remember having had any other conversation or interview with any of them.

Interrogatory 4. If you ever had any conversation with complainants, or either of them, or any employee of theirs, in regard to said notes in said bill of complaint mentioned; then state whether it was before or after you [heard] of the agreement between complainants and R. M. and Brevoort Butler of 19th of February, 1867, marked Exhibit No. 1, to your answer in this case, and the trust-deed by said Butlers to Hilliard, trustee for the use of complainants, dated 2d April, 1868, marked Exhibit No. 7, to your said answer. State when and where you first knew or heard of said agreement and trust-deed in this interrogatory mentioned. Were they, or either of them, made with the knowledge or consent of yourself, or J. W. Roach, deceased, in his life-time?

Answer. I had no such conversation, so far as I can recollect. I first heard of the agreement dated February 19, 1867, in the office of
218 Wilkinson and Bowman, in Yazoo City, when they were writing my answer to the complainants' bill. I first heard of the deed of trust from the Butlers to Hilliard, dated April 2d, 1868, in Yazoo City, about the time when I levied on the Butlers' cotton for rent; this was in the fall of 1868. Neither of these instruments were made with the knowledge or consent of my brother, J. W. Roach, or myself.

Interrogatory 5. Were you and J. W. Roach in his life-time sureties on said notes in complainants' bill mentioned?

Answer. We were.

Interrogatory 6. State, if you know, what was the agreement between the parties to said notes in complainants' bill mentioned in regard to the payments thereof?

Answer. It was agreed that the cotton-crop raised by the Butlers should be shipped to Summers and Brannins, and proceeds first applied to the payment of the notes.

Interrogatory 7. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I know of nothing further which is material, or which so ap-

pears to me, except the statement made to me by R. M. Butler,
219 that his object for planting in the year 1868 was to pay off the unsatisfied balance due from him and his brother to Summers and Brannins, and that they had made further advances to him and Brevoort Butler for that purpose.

And to the cross-interrogatories he answers:

X-interrogatory 1. If you say, in answer to 6th direct interrogatory, that there was any agreement of the kind referred to therein, state when said agreement was made, with whom it was made, who was present when it was made; also state whether it was verbal or in writing; if in writing, where is the writing? If verbal, state the precise words used. Also state whether it was before or after the execution of the notes and mortgage by yourself and J. W. Roach.

Answer. I was not present when the agreement alluded to was made; but was subsequently informed by my brother, J. W. Roach, that such agreement was made when the notes were executed by the other parties; and at my brother's solicitation, and on account of his statement of such agreement, I also signed the notes.

X-interrogatory 2. Did not Summers and Brannins make the advances in money and supplies to R. M. and Brevoort Butler at the request of yourself and J. W. Roach, or of one of you; and was it not on your credit and not on the credit of the Butlers, that the advances were made?

220 Answer. The arrangement was made in New Orleans, between the complainants and J. W. Roach and the Butlers, while I was in Adams County, Mississippi. Subsequently R. M. Butler came to me, with my brother, J. W. Roach, and induced me to sign the notes. I am, therefore, unable to say what induced the complainants to make advances. I suppose that the names of my brother and myself on the notes were an inducement to make advances to the amount secured by the notes.

X-interrogatory 3. Did not the Butlers rent land of you and J. W. Roach, and did you not get Summers and Brannins to make the advances in order to enable the Butlers to cultivate the place, and thus pay you rent for the same? And was it not an agreement between you and the Butlers, when they rented the land from you that you would procure some commission merchant to advance money and supplies to carry on the plantation?

Answer. The Butlers rented from J. W. Roach and me the land which they cultivated. I had nothing to do with getting Summers and Brannins to make advances to the Butlers, but only signed the notes after the arrangement had been made with them. It was not agreed between me and the Butlers that I would get a commission merchant to advance money and supplies to carry on the plantation. I held out no inducement to the Butlers to rent from us; for we could have rented to perfectly solvent parties. We rented to the Butlers because
221 we desired to assist them, they having been college-mates of ours.

X-interrogatory 4. If you speak of any conversations with the complainants, or either of them, state when and where such conversations occurred, with which of the complainants it occurred, and who was present at the time. Also state the exact language used in such conversation.

Answer. The only conversation which I remember to have had with any of the complainants is the one alluded to in my answer to the third direct interrogatory. It occurred with Mr. Summers the day

when I executed my note for fifteen hundred dollars, the exact date not remembered, but probably in February, 1869, or thereabouts. It occured in Mr. Summers' private office connected with the house of Summers and Brannins, in New Orleans. No one else was present.

And further this deponent saith not.

E. ROACH.

I also certify that the said examination was carefully read by said Eugene Roach, and signed by him; and that it remained in my custody until by me sealed up, and deposited in the post-office at Yazoo City, addressed to the judges of the circuit court of the United States, Jackson, Mississippi.

Given under my hand the 28th day of March, A. D. 1870.

R. B. MAYES,
U. S. Commissioner.

222 And afterwards, to wit, on the 20th day of May, 1871, it being a day in the regular term of said circuit court of the United States for the southern district of Mississippi, begun and held in the court-room of said court at Jackson, in said district and State, on the first Monday and first day of May, A. D. 1871, before the Hon. R. A. Hill, judge of said court, sitting in chancery, the following decree was rendered by said court, in this cause, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court, May term, 1871.

SUMMERS AND BRANNINS
vs.
EUGENE ROACH ET AL. } In equity.

Be it remembered that this cause came on to be heard on this 19th day of May, in the year 1871, upon the bill, exhibits, answers, pro confesso, &c., and the proofs in the same, and now at this day, the court being sufficiently advised, because it appears that the defendants are indebted to the complainants, and that complainants are entitled to have the mortgage in the bill mentioned foreclosed, and the property thereby conveyed sold for the purpose of paying the amount so due. But because the court is not sufficiently advised of the amount due to complainants, it doth order, adjudge, and decree that this cause
223 be referred to *to* a commissioner to take and state an account between the parties, and report the same to this court. In taking said account the said commissioner shall state an account of the dealings between the complainants and the defendants, R. M. and Brevoort Butler, for the year 1867; and in said account he shall charge the said Butler with all money and supplies furnished to them by complainants during the year 1867, and up to the second day of January, in the year 1868, including in said account the item of $57.33, paid on this day; and he shall also charge said Butlers' interests on the amount so advanced at the rate of 8 p'r c't p'r ann.; he shall also charge them with two and a half p'r c't commissions upon the principal sum so advanced. He shall credit said Butlers with the nett proceeds of all cotton of the crop of 1867, shipped by them to complainants. After stating said account on

this basis he shall strike a balance between them and show what amount was due to complainants by the said Butlers on the 13th day of February, in the year 1868. The commissioner shall also state an account between the complainants and the said Butlers of their dealings for the year 1868, and in said account he shall charge said Butlers with
224 all moneys and supplies furnished and advanced to them by complainants during the year 1868, and for costs and charges paid by complainants for and on account of the seizure of the fifteen bales of cotton attached and sold in Vicksburg in the year 1868, and shall also charge the said Butlers with interest at the rate of eight per c't per ann. upon all money and supplies paid and advanced by complainants, and also with two and a half per c't commissions on the principal sum so advanced; and he shall credit the said Butlers in said account with the nett proceeds of all cotton of the crop of the year 1868, shipped by them for sale to complainants, and also with the nett proceeds of the fifteen bales of cotton attached at Vicksburg as aforesaid, amounting to twelve hundred and sixty-nine $\frac{52}{100}$ dollars, and which was paid over to complainants; and after taking said account on this basis for the year 1868, he shall strike a balance between the parties, and ascertain the amount that was due by said complainants on the 8th day of January, in the year 1869, on account of the dealings for the year 1868, allowing to said defendants interest at the rate of 8 per c't per ann. on any payments on said account up to the date of striking said balance. The said commissioner shall then compute the amount due to complainants by the said Butlers to this date on both accounts, charging the said Butlers
225 with the balance found to be due to complainants on the account of the dealings for the year 1867, from the 2d day of January, 1868, and computing interest on said amounts at the rate of 8 per c't per ann., and allowing to the said Butlers credit on the same for the amount found to be due to them on the 8th day of January, in the year 1869, for the dealings of the year 1868, and also allowing them credit for the amount of money which the complainants obtained from the receiver in this cause. He shall also ascertain and report what amount, if any, complainants are indebted to R. M. Butler, individually, for acting as their agent; and if any amount is so found to be due to said R. M. Butler individually, that amount shall be applied as a payment pro tanto on the account of complainants against said R. M. and B. Butler; and after taking and stating the accounts as aforesaid, the said commissioner shall take an account and report the amount due at this date to complainants by the defendants R. M. and Brevoort Butler. The commissioner shall also compute the amount of the principal and interest, up to the date of this decree, of the two notes in the bill mentioned secured by the mortgage made by the defendant, Eugene Roach and J. W. Roach, deceased, computing interest at the rate of 8 per c't per ann.

226 The said commissioner in taking said accounts may use the proof now on file in this cause and such other proof as either party may adduce before him.

Before taking said account he shall give ten days' notice in writing to the respective parties or their solicitors, of the time and place of taking said account, and he shall report said accounts and his actions in the premises, together with any additional proof that may be adduced before him, to this court with all convenient speed. The court further orders, adjudges, and decrees that upon the coming in of said report and the ascertainment of the amount that may be due by the said Butlers to said complainants, if said amount shall not be paid to complainants within ten days from the time the amount shall be so ascertained and adjudged

to be due to complainants from said Butlers, the mortgage in the pleadings mentioned shall be foreclosed, and a sufficient amount of the property included in the same shall be sold to pay the amount so found to be due to the complainants, with 8 per c't interest thereon up to the date of said sale, provided that said amount shall not exceed the amount of the principal and interest of said two notes for $2,500 each in the pleadings mentioned, with interest thereon at 8 per c't per ann. to the day of
227 sale, it being hereby ordered, adjudged, and decreed that complainants cannot foreclose said mortgage and sell the property conveyed thereby for any greater amount than the amount of the said two notes with interest thereon at 8 per c't per annum. Said sale, when made, shall be for cash to the highest bidder, in front of the capitol in the city of Jackson, after thirty days notice by advertisement in some newspaper published in Jackson, of the time, place, and terms of sale, and the commissioner shall execute a deed for said property to the purchaser and put him into possession thereof. The court further orders, adjudges, and decrees that James D. Stewart be appointed a commissioner to take and state the accounts, and to make the sale ordered herein. All other questions reserved until the coming in of the report of said commissioner, stating the account as aforesaid.

Ordered, adjudged, and decreed this 20th day of May, in the year 1871.

R. A. HILL.

228 And on the 24th day of November, A. D. 1871, the following report of James D. Stewart, the commissioner in this cause, together with the accompanying vouchers, "A" and "B," were filed herein, to wit:

Circuit court of the United States, southern district of Mississippi.

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET AL. } N. S. 81. In chancery.

To the honorable the judges of the circuit court of the United States, sitting in equity at Jackson, for the southern district of Mississippi:

The undersigned commissioner, appointed under a decree of your honorable court, rendered on the 20th day of May, 1871, to state an account between complainants and defendants in the above-stated cause, begs leave to report that, after having given notice to counsel, as required by said decree, he has accomplished said duty, and herewith submits papers marked Exhibits A and B as results:

It will appear from the account marked "A," that the defendants, R. M. and B. Butler, were indebted to complainants, Summers and Brannins, on the 13th day of Feb'y, 1868, in the sum of forty-four hundred and ninety-seven $\frac{90}{100}$ dollars, ($4,497.90,) allowing all credits
229 mentioned in said decree and charging interest at the rate of 8 per c't per annum on the dealings of the year 1867.

On the dealings for the year 1868, your commissioner reports that the complainants were due to the defendants "Butlers" on the 7th day of January, 1869, the sum of $1,507.31.

Upon striking a balance at this date, it appears that the defendants "Butlers" were indebted to complainants in the sum of $3,316.43.

On the 22nd day of February, 1870, it appears that the defendants

"Butlers" were indebted to the complainants in the sum of $8,469.42, after allowing to said defendants the amount of $1,144.74 as a credit, being the am't paid by the receiver to the said complainants.

Calculating the interest upon this am't of $2,469.42, at the rate of 8 per c't interest and charging the defendants with the sheriff's fees paid by complainants on 8th July, 1869, and interest ($401) up to the 19th day of May, 1871, your commissioner reports the balance due complainants by defendants, R. M. and B. Butler, on the said 19th day of May, 1871, to be $2,733.53, (twenty-seven hundred and thirty-three $\frac{53}{100}$ dollars.)

By reference to voucher "B," it will be seen that the aggregate am't due upon the two mortgaged notes given by defendants Roach's to complainants Summers and Brannins, on the 19th day of May, 1871, was $6,418.90.

230 After reading and carefully examining the depositions pro and con as to whether complainants are indebted to Butler for services rendered or said to have been rendered as agent by said Butler, your commissioner does not think there is any indebtedness upon that score due by said complainants to said defendant.

Your commissioner asks an allowance of $100.00.

All of which is respectfully submitted.

JAMES D. STEWART,
Commissioner.

Filed with vouchers "A" and "B," in clerk's office, Nov. 24, 1871.
GEO. L. SWANN, *Clk.*

(For vouchers "A" and "B" to foregoing report see next and following pages.)

231 VOUCHER "A."

Messrs. R. M. and B. Butler in ac. with Summers and Brannins.

(Int. to Nov'r 29, 1867.)

1867.				
Feb'y 2	To paid you	21 45		325 00
16	" fr't per Lilly	63		9 90
"	" inv. sund's p'r Magenta	15 19		241 52
"	" d'ft in fav. L. Hoffman	5 67		85 15
"	" " " " J. W. Roach	6 29		100 00
18	" " " " do	12 45		200 00
"	" " " " W. Leonard Bro's	119 02		1,890 00
23	" " " " St'r Hope	7 58		125 00
25	" " " " W. S. Wheeler	12 19		200 00
"	" " " " Harrison and Hyatt	21 31		350 00
"	" " " " W. Leonard Bro	12 19		200 00
26	" inv. sund's p'r R. E. Lee	18 08		298 25
28	" stamps on mortgage	31		5 00
April 9	" inv. sund's from Louisville	19 26		377 15
19	" p'd Ja's Hazlett's bill corn & oats	2 26		46 15
June 7	" " you	1 46		38 00
8	" inv. sund's p'r Indiana	9 62		252 45
19	" p'd steamer Hope	1 92		53 80
July 2	" inv. sund's p'r Quitman	2 16		66 47
3	" d'ft fav. Harrison & Hyatt	1 77		54 75
Aug. 7	" inv. sund's Norman from L'v'lle	1 40		56 60
14	" " " p'r Empire	3 22		138 12
17	" p'd W. R. Green & Co., bill corn	55		24 59
20	" " Stewart and Mitchell, forage & fr't	40		17 50
30	" " " " " "	04		2 25
Sept. 7	" fr't on pork per Crescent	06		3 75
"	" inv. sund's " National	70		38 95
23	" fr't " "	03		2 25
Nov. 28	" inv. sund's, " Quitman	00		25 11
		297 21		5,227 31
				297 21
	2½ commissions on $5,227.31			130 68
	Cr.			$5,655 20

VOUCHER "A."—Continued.

Nov. 29	By nett pro., 24 b. c.		1,067 73
" "	Bal. due this day		$4,587 47

1867. Voucher "A"—Continued.

Nov. 29	To bal. due this day, bro't forw'd		4,587 47
1868.			
Jan'y 2	" int. on bal. to this date	34 65	34 65
" "	" p'd W. N. Green & Bro's, charges on 4 b. c.		$4,622 12 57 33
	2½ comm's on $57.33		1 43
	CR.		$4,680 88
Jan'y 2	By this am't from Hogan and Patton, for 1 b. c.		39 94
			$4,640 94
" 13	Int. on $4,640.94 to this date		11 34
	CR.		$4,652 28
" "	By nett pro. 4 b. c.		184 16
" "	Bal. due this day		$4,468 12
Feb'y 13	Int. on $4,468.12, to this date		29 78
" "	Bal. due this date		$4,497 90

JAMES D. STEWART, *Comm'r.*

Filed with comm'r s rep. 24 Nov., '71.

GEO. T. SWANN, *Clk.*

VOUCHER "B."

Messrs. R. M. and B. Butler in ac. with Summers and Brannins.

(Int. to July 7, from date of first charge.)

1868.			
April 4	To stamps on deed trust	16	8 00
" 11	" invoice pork per Quitman	1 10	59 86
" 25	" p'd freight	4	3 00
May 11	" dr'ft in favor Harrison & Hyatt	2 12	178 00
" 25	" freight	2	2 25
June 4	" telegram	2	2 70
" 3	" " from them	1	2 16
" 11	" draft in fav. st'r Calumet	58	100 00
" 25	" " " " "	8	43 20
" 27	" " " " "	11	48 50
" "	" invoice sund's per Quitman	13	62 01
July 5	" draft fav. st'r Calumet		27 82
		4 37	537 50
			4 37
	CR.		
			541 87
" 7	By this am't rec'd from D. N. Butler		51 00
	Am't due this day		$490 87
" 1	To telegram		1 50
10	" p'd D. N. Butler bal. $51 left by him July 7, int. to Sep. 18	75	49 50
13	" freight	04	3 00
20	" inv. sund's from Louisville	1 20	92 50
24	" dr'ft fav. st'r Calumet	1 22	100 00
Aug. 22	" invoice osnaburgs	09	17 24
24	" dr'ft fav. st'r Calumet	32	59 00
28	" " " E. G. Morse	52	119 73
Sept. 14	" " " Hiram Harrison, ag't	24	258 54
		4 38	4 38
	CR.		
			$1,196 26
" 18	By nett proc. 3 b. c.		297 23
"	Bal. due this day		$899 03
25	To d'ft fav. W. H. Mangum, int. to Oct. 13	10	27 45

EXHIBIT "B."—Continued.

	30	" " " st'r Calumet	09	33 93
Oct.	6	" inv. bagg & pork	35	228 14
	14	" p'd Brevoort Butler	00	100 00
			54	54
		Am't forw'd		$1,289 09
234		Voucher "B"—Continued.		
1868.				
Oct.	14	To am't forward		$1,289 09
		CR.		
	13	By nett pro. 8 b. c		735 00
	14	Bal due this day		$554 09
	15	To inv. whiskey, int. to Nov. 2nd	09	23 83
	17	" " bagg & pork	5	15 50
Nov.	3	" " pork	00	99 75
			14	14
		CR.		$693 31
"	2	By nett proc., 15 b. c		1,368 33
"		Bal. due R. M. and B. Butler this day on ac. 1868		$675 02
1868.		Summers and Brannins to R. M. and B. Butler:		
Nov.	2	To bal. due this day on ac. 1868	45	675 02
	5	Cr. by am't p'd Butler		30 00
	19	int. to this date	2 00	645 02
"		" by fr't on pork		6 75
	21	in't to this date	28	$638 27
"		" am't p'd Butler, (R. M.)		25 00
				613 27
Dec.	2	By costs suit vs. Hogan & P		6 00
				607 27
	1	To nett proc. 15 b. c. sold at V'burg		1,269 52
	18	int. to this date	6 67	1,876 79
"		Cr. by am't p'd R. M. Butler		50 00
	19	To int. to this date	40	1,826 79
"		Cr. by bagg & ties furnished by Hazlett & Co		39 00
				1,787 79
"		" " att'ys' fees, North & H., justice, &c		223 08
1869.				
Jan'y	8	To int. to this date	6 95	1,564 71
"		Cr. by McMasters, expenses to V'burg		20 00
				$1,544 71
			16 75	16 75
		Am't forw'd		$1,561 46
235		Voucher "B"—Continued.		
1869.				
Jan'y	8	To am't forw'd due Butlers		1,561 46
		By commissions 2½ per c't on $2,166.14 advances in the year 1868		54 15
"		bal. due Butlers on ac. of 1868		$1,507 31
Feb'y	13	" int. on $1,507.31 to this date		
1868.				
Feb'y	13	Amount due Summers and Brannins this date		4,497 90
1869.				
Jan'y	8	Interest to this date		325 84
				$4,823 74
		CR.		
"		By bal. due Butlers on ac. of 1868		1,507 31
		Bal. due Summers and Brannins this day		$3,316 43
1870.				
Feb'ry	22	To int. on $3.316.43 to this date		297 73
				$3,614 16

EXHIBIT "B."—Continued.

		Cr.	
"	"	By am't paid them by receiver	1,144 74
1871.			$2,469 42
May 19		Int. on $2,469. 42 to this date (of decree)	260 10
1869.			$2,729 52
July 8		To sheriffs' fees, Hogan & Patton omitted and int. to 19th May, 1871	4 01
1871.			
May 19		" bal. due Summers & B. by Butlers	$2,733 53
		To mortgage notes drawn by Roachs in favor of Summers and Brannins :	
		1st dated Feb'y 1st, '67, due 15th Oct., '67	2,500 00
		Int. to 19th May, 1871, *a* 8 per c't	717 78
		2nd dated Feb'y 1st, '67, due 15th Nov. '67	2,500 00
		Int. to 19th May, 1871	701 12
		Total am't due 19 May, '71	$6,418 90

Filed with com'r's rep., 24th Nov. '71.

GEO. T. SWANN, *Clk*

236 And now afterwards, to wit, on the 24th day of January, 1872, the same being a day in the term of said court mentioned in the caption hereof, to wit, an adjourned term of the said circuit court of the United States for the southern district of Mississippi, held pursuant to lawful adjournment, at the court-room thereof, in the city of Jackson, in said district, on Monday, the 22d day of January, A. D. 1872, the following final decree was rendered in this cause by said court and entered upon the minutes thereof, to wit:

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET AL. } N. S. 81. In chancery.

Be it remembered that this cause came on to be heard on this day for final hearing upon the pleadings and proof therein, and on motion to confirm the reports of James D. Stewart, commissioner appointed to take and state an account between the parties, and to report the same, and also to report the amount due upon the notes and mortgage executed to secure the same, in the pleadings mentioned, and now at this day, the court being sufficiently advised, and because it appears from the report of said James D. Stewart, commissioner, to which report no exceptions have been taken, and which report is in all things
237 hereby confirmed, that the defendants, R. M. and B. Butler were indebted to complainants on the 19th day of May, in the year 1871, in the sum of twenty-seven hundred and thirty-three dollars and fifty-three cents, and which sum, with interest at the rate of 8 per cent. per annum, from the 19th day of May, 1871, is still due and unpaid to complainants; and it also appearing to the court, from said report, that there was due on the 19th day of May, 1871, the sum of six thousand four hundred and eighteen dollars and ninety cents on the two notes secured by the mortgage in the pleadings mentioned, executed by Eugene Roach and J. W. Roach, and held by Summers and Brannins as collateral security for the amount due to them by the said Butlers, and that the said sum of six thousand four hundred and eighteen dollars and ninety cents, with interest thereon at the rate of 8 per cent. per annum from the 19th day of May, in the year 1871, is still due and unpaid: The court therefore orders, adjudges, and decrees that unless the said defendants, or some one of them, shall within ten days from

this date pay to the complainants the said sum of twenty-seven hundred and thirty-three dollars and fifty-three cents, with interest thereon at the rate of 8 per cent. per annum from the 19th day of May, in the year 1871, it shall be the duty of the said James D. Stewart, commissioner, &c., appointed by the interlocutory decree rendered
238 herein on the 20th day of May, in the year 1871, forthwith to advertise and sell the land included in the deed of mortgage executed by Eugene Roach and J. W. Roach, on the 12th day of February, in the year 1867, and filed as Exhibit "C" to complainant's bill.

Said sale shall be advertised and made in manner and form prescribed in the interlocutory decree aforesaid, and said sale shall be made for the purpose of paying the amount due to the complainants by the said R. M. and B. Butler as aforesaid, with interest thereon at the rate of 8 per cent. per annum, from the 19th day of May, 1871, till the day of said sale, and also for the purpose of pay' the costs of this suit to be taxed, and also the expenses and costs of making said sale, with the commissions, &c., payable to said commissioner, which costs, expenses, and commissions shall be first paid out of the proceeds of said sale, and the remainder shall be paid to the complainants on the debt due to them as aforesaid, and if there should be any surplus remaining in the hands of said commissioner of the proceeds of said sale after paying the debt due to complainants as aforesaid, such surplus shall be paid into court, to be paid over and distributed to the parties entitled thereto; but if the proceeds of said sale shall be insufficient to pay the costs and expenses as aforesaid, and the debt due to complainants, then the said Eugene
239 Roach shall pay to complainants, and complainants shall recover of him whatever balance may remain due and unpaid after applying the proceeds of said sale to the debt due to complainants as aforesaid, and for which balance execution shall issue against the said Eugene Roach. Thus ordered and decreed on the 24th day of January, in the year 1872.

R. A. HILL, *Judge, &c.*

And on the first day of February, A. D. 1872, the same being also a day in said term of said court, mentioned in the caption hereof, the following order, granting an appeal herein, was made by said court and entered upon the minutes thereof, to wit:

SUMMERS AND BRANNINS *vs.* EUGENE ROACH ET AL. } N. S. 81. In equity.

Upon motion of the defendant, Eugene Roach, and of the infant defendant, Naylor Roach, by Archy McGehee, his guardian ad litem, and it appearing that the mortgaged land is ample to pay the amount decreed; it is now by the court here ordered that an appeal be, and the same is hereby, allowed to them, returnable to the next ensuing term of the Supreme Court of the United States, from the final decree entered herein on the 24th day of January, A. D. 1872, to operate
240 as a supersedeas, upon they, the said Eugene Roach and Archy McGehee, entering into bond payable to the said complainants in the penal sum of one thousand dollars, with John H. Odeneal as security, conditioned to pay to said complainants all costs of said suit and just damages for delay, and all costs and interest on said appeal.

Which said bond is now accordingly given, and by the court approved and filed.

Ordered this 1st day of February, A. D. 1872.

R. A. HILL, *Judge.*

Said appeal-bond is as follows, to wit:

Know all men by these presents that we, Eugene Roach and Archy McGehee, guardian ad litem for Nailor Roach, a minor under the age of twenty-one years, and John H. Odeneal, of the city of Jackson, and State of Mississippi, are held and firmly bound unto Edwin H. Summers, John S. Brannins, Abraham O. Brannins, and H. D. Newcombe, partners, conducting business under the name, firm, and style of Summers and Brannins, in the sum of one thousand dollars, their executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this the first day of February, in the year eighteen hundred and seventy-two.

Whereas the above-named Eugene Roach and Archy McGehee,
241 guardian ad litem as aforesaid, have this day prayed in open court and obtained an order of the circuit court of the United States for the southern district of Mississippi, dated the first day of February, A. D. 1872, allowing an appeal to the next ensuing term of the Supreme Court of the United States to reverse the decree rendered by the said circuit court for the southern district of Mississippi, on the twenty-fourth day of January, A. D. 1872, at a term of said circuit court, said decree for the foreclosure of a mortgage and for the sum of $\$2{,}733\frac{53}{100}$, with interest and costs as stated in said decree; said decree having been rendered by said circuit court in the chancery cause of Summers and Brannins vs. Eugene Roach et al., in which the said Eugene Roach with others are defendants, and the said Edwin H. Summers, John S. Brannins, Abraham O. Brannins, and H. D. Newcombe, are complainants:

Now, therefore, the condition of this obligation is such that if the said Eugene Roach and Archy McGehee, guardian ad litem as aforesaid, shall prosecute their said appeal to effect, and answer all costs and damages, and all just damages for delay, and all costs and in-
242 terests on said appeal if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

EUGENE ROACH. [SEAL.]
ARCHY McGEHEE, [SEAL.]
Guard'n ad litem for Nailor Roach.
JOHN H. ODENEAL. [SEAL.]

Approved:

R. A. HILL, *Judge, &c.*

Filed and bond approved Feb'y 1st, 1872.

G. T. SWANN, *Clk.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Circuit court U. S., 5th judicial circuit.

I, George T. Swann, clerk of said circuit court, hereby certify that the foregoing two hundred and forty-two pages contain a full, true, and complete transcript of the record of the final decree between the parties therein named, with the appeal therefrom, together with a true and correct copy of the appeal-bond filed and approved therein, as the same remain of record and on file in said court.

In testimony whereof I have hereto set my hand and affixed the seal of said court at Jackson, in said district, this 7th day of October, A. D. 1872.

[SEAL.] GEO. T. SWANN, *Clk.*

NOV. 4, 1872.—Received clerk's fee for transcript, seventy-two $\frac{14}{100}$ dollars, of appellant, E. Roach.

GEO. T. SWANN, *Clk.*

(Indorsement on cover:) S. Mississippi C. C. U. S. No. 245. Eugene Roach and Naylor Roach, by his guardian ad litem, Archy McGehee, appellants, vs. Edwin H. Summers, Jno. S. Brannins, Abraham O. Brannins, and H. D. Newcombe, partners, as Summers & Brannins. Filed 12th November, 1872.

Supreme Court of United States.

EUGENE ROACH *et al.*
v.
SUMMERS, BRANIN *et al.*
No. 245.

Brief of P. PHILLIPS,

For Appellants.

S. & R. O. POLKINHORN, PRINTERS, D ST. NEAR SEVENTH.

Supreme Court of United States.

EUGENE ROACH *et al.*
v.
SUMMERS, BRANIN *et al.*
No. 245.

Brief of P. PHILLIPS,

For Appellants.

The bill is filed by the appellees against the appellants, the two Butlers and Emile Schaeffer.

It sets forth that the appellants rented a certain plantation in the State of Mississippi, to the Butlers, and that to enable them to procure supplies for cultivating the same, which were to be advanced by the appellees, merchants in New Orleans, the appellants united with the Butlers in executing two promissory notes, each for $2,500, and secured the same by a certain deed of mortgage. The advances were not to exceed $5,000, and the cotton raised on the plantation was to be consigned by the Butlers to the appellees.

The bill avers that after giving credit for the cotton shipped in 1867, there remained due to the appellees $4,774.69.

That the Butlers, desirous to continue the plantation for 1868, made a further arrangement for the supplies of that year, as well as for the balance then due, to secure

That the sole consideration of the notes as agreed with the appellees, was for plantation supplies for the year 1867. The appellants were to be liable only for the *supplies of that year, and the notes were simply as security for said advances.*

That it was further agreed that the crops of 1867 *and the succeeding crops were all to be first applied as credits on said notes.*

They admit the execution of the deed of trust to Hilliard; but assert that the appellants were not privy thereto, and as far as they know were ignorant of its existence.

They aver that the consideration of that instrument failed by reason of the non-compliance of the appellees with their stipulations.

Upon the bill, answers and proofs the court decreed that the complainants were entitled to a foreclosure of the mortgage, and referred the case to the master to state the account between the Butlers and complainants, charging the former for all moneys and supplies for the year 1867, with interest at 8 per cent. and 2½ per cent. commissions, and crediting them with the net proceeds of cotton crop of that year, so as to show the balance due for 13 February, 1868; a similar direction is given for the year 1868, in which a credit was directed to be also given for $1,269.52 for fifteen bales attached at Vicksburg, and so ascertain the balance due 8 January 1869, and computing interest on these balances.

He was also to compute the interest at 8 per cent. on the mortgaged notes, and if the sum so found due by the Butlers was not paid within 10 days a sale should take place to pay the said amount with interest to date of sale. p. 67

The master reported in conformity to this order of reference, and a final decree was rendered on 24 January, 1872, and from this decree the present appeal is taken.

The case then is this: the appellants agreed to become become sureties for the Butlers, who were cotton planters, for the sum of $5,000, and to secure this sum executed the notes and mortgage now sought to be foreclosed.

In the sworn answers of Roach and the Butlers, it is averred that this transaction was made with the appellees on the distinct understanding that the mortgaged notes were given to cover any "supplies" they might furnish the Butlers for the *crop of* 1867, and that the proceeds of that crop and those subsequently made were to be first applied to the extinguishment of this liability.

See answer Eugene Roach, p. 15.

" " Butler, p. 25.

To the same effect is the deposition of Butler, p. 85.

The evidence to establish this agreement thus clearly expressed, is uncontradicted by the complainants, though one of their firm, E. N. Summers was twice examined as a witness. pp. 33, 50.

At p. 33, he states that the notes were given for advances to be made to the Butlers—that he did not know that the Roaches were otherwise interested than in securing a tenant for their property. That the Butlers made but a small crop in 1867, and having no means to continue, they agreed to make further advances to enable them to plant another crop—the Butlers agreeing to give as additional security, a deed of trust on the crop to be grown. This deed is filed as Exhibit D., to the deposition.

With the issue thus directly presented by the answers of the defendants, and one so vital to the recovery—there is no attempt made by the witness to discredit the terms of the agreement by which the Roaches became liable for the mortgaged notes as set forth in the answers.

Assuming then, that these statements truly describe the agreement between the parties, it appears by the accounts filed by complainants, that they received and credited as follows:

1867.	Nov. 29,	24	Bales,	$1067 73
1868.	Jan. 13,	4	"	184 16
	Sept. 18,	3	"	297 23
	Oct. 13,	8	"	735 00
	Nov. 2,	15	"	1368 33
	Dec. 1,	15	Bales, from Vicksburg,	1269 52
	In the aggregate			$4921 97

See pp. 40, 41.

The difference between this amount and the mortgage notes, is all that the appellees can be made answerable for.

The position occupied by the appellants was that of a surety. Equity has regard to the substance of the transaction. If a promise be made for the benefit of another without sharing in the consideration, the promisor will be a surety whatever may be the form of the agreement.

Hollier v. Eyre, 9 Cl. and F. 1.

He may be jointly bound or appear on the face of the writing as the sole debtor, without being on that account less a surety or losing the equitable rights which belong to him in that capacity.

Davis v. Steinback, 6 De G. M. and G., 679.

Flyn v. Mudd, 27 Ill., 323.

Grafton Br. v. Kent, 4 New Hamp., 221.

The failure of the creditor to carry out the agreement in every material particular or his departure from it in any point that can effect the surety, will discharge the latter in equity, even when it works no change in the legal relation of the parties.

Calvert v. London Dock, 2 Keene, 638.

Jones v. Kerr, 30 Geo., 93.

Bowser v. Cox, 6 Beavan, 110.

The liability of the surety is always construed by the subject-matter, the usage of business, and the real views of the parties, however general or forcible the terms may be in which the contract is expressed.

Boston, M. C. v. Messenger, 2 Pick. 325.

By the agreement all the cotton crops were to be applied to the payment of the notes for which the security was liable. The usage of trade, applicable to this agreement, would entitle the appellees to the usual charges for transacting the business, for this will be held to have been in the contemplation of the parties. To this extent only could any deduction be made as against the surety.

Now it appears that within a few weeks, after this securityship had been entered into, to wit, on 19 February, 1867, the appellees without the knowledge of the appellants made an agreement with the Butlers, exhibited at p. 90.

Without in any manner referring to the arrangment by which the appellants became surety, this agreement recites that Butlers required money to carry on the plantation, and the appellees are willing to advance $5,000. In consideration of which it is stipulated that the appellees should have a *certain portion of the crop, and in addition to this share, they should receive* 2½ *per cent. for advancing*, 10 *per cent. interest thereon, and the usual commission for selling.*

We submit that this was a substitute for the agreement made with the appellants, and wholly discharged them.

To hold otherwise, we must treat this transaction as a fraud upon the sureties, for if carried into effect it would grossly violate the understanding that all the cotton crops were to go to the extinguishment of the notes.

More than this, on the 2 April, 1868, the appellees and the Butlers entered into another agreement, exhibited at page 7.

By this, in consideration of further advances, a conveyance to Hilliard, as trustee, was made of the crop of 1868, with the stipulation that the proceeds of that crop should be applied, in the first instance, *to this further advance.*

This stipulation is violative of the agreement with the surety, and affords additional evidence of his release from responsibility.

It is true there is a recital, that it was "in no way to affect or invalidate the security already held by said Summers & Brannin."

But this recital has no effect upon the surety not consenting thereto.

The recital was unneccessary, if the transaction did not vary the agreement with the surety.

If it did so vary it, then to hold the surety bound he must have consented thereto.

Again, these notes were given as security to the appellees for advances to be made by them. But before a dollar was advanced, and without the knowledge of the makers, the appellees sold these notes at a ruinous rate of discount, and then charged $2\frac{1}{2}$ per cent. for so doing.

Butler testifies, that the notes were "discounted without their consent, and at such a damaging discount, that

the error is apparant. Moreover, they have charged 2½ per cent. for advancing money realized from the sale of the notes we did not authorize." p. 61.

The 19 bales of cotton referred to, in the decree, was attached by the appellants for rent due by the Butlers, this cotton was sold, and the proceeds sent to the appellees.

The decree instead of applying these proceeds to the payment of the notes, as shown to have been the agreement of the parties, direct them to be credited to Butler, in the account for 1868.

We insist that these proceeds as well as those from all the other lots of cotton less the usual charges for such business, should be credited on the notes, as between the appellants and the appellees.

Again, the decree allows the appellees to be credited "with all money and supplies" advanced by them.

As the agreement of the surety was only for "supplies," it is submitted that this exceeded the liability for which he was responsible.

We need not advert to the rules of interpretation which strictly confine such liability.

There is certainly a difference between "money" and "supplies." One might be very willing to trust a party with the use of the plantation supplies, to produce a crop which was to go in extingnishment of the liability, and yet be unwilling to trust the party with money, which he might or might not appropriate to the production of the crop.

ASSIGNMENT OF ERRORS.

1st. The court erred in not holding the agreement of 19 February, 1867, and 2 April, 1868, as releasing the appellants from liability on their notes.

2d. The court erred in not applying the Vicksburg cotton to the account of 1868—when it should have been held as a credit on the notes.

3d. The decree should have directed that all the cotton received as well in 1868 as in 1867, less the usual commercial charges should be credited to the appellants, and the remainder, if any, was all that could be legally decreed against them. In holding otherwise there is error.

4th. There was error in the decree in allowing credit for " money " advanced.

On these grounds we submit the decree should be reversed.

P. PHILLIPS,
for Appellants.

IN THE

Supreme Court of the United States.

October Term, A. D. 1873.

EUGENE ROACH, Et Als., Appellants,

vs.

SUMMERS & BRANNINS, Appellees.

NUGENT & YERGER,

FOR APPELLEES.

In the Supreme Court of the U. S.,

October Term, A. D. 1873.

EUGENE ROACH, *et als.*, APPELLANTS,
vs.
SUMMERS & BRANNINS, APPELLEES.

The questions involved in this appeal can be readily decided upon a fair presentation of the facts that were before the lower Court, and we confidently anticipate an affirmance of the decree. On the first day of February, 1867, R. M. Butler, Brevcort Butler, J. W. Roach and Eugene Roach made their two promisory notes, each for the sum of $2,500, and bearing interest from maturity at the rate of eight per centum per annum, both payable to the order of Summers & Brannins, the first due October 15, and the second, November 15, 1867. To secure the payment of these two notes J. W. Roach and Eugene Roach executed and delivered to Summers & Brannins a mortgage on certain lands situate in Yazoo county, Mississippi.

The mortgage was conditioned to be void only upon payment of the notes above specified. It was dated February 12, 1867, and was duly signed, sealed acknowledged and recorded. The occasion for the execution of the notes and mortgage was this: J. W. Roach and Eugene Roach had leased the lands to the Butlers, who applied to Summers & Brannins, Cotton Factors, for an advance of $5,000, in money and supplies, in aid of their cultivation in a crop of corn and cotton. The Butlers and Roaches proposed to secure the payment of the anticipated advance by a shipment of the cotton to be grown thereafter on said lands, and to the extent of $5,000, by executing the notes above stated and the mortgage above referred to. This proposition was accepted and the mortgage and notes were accordingly executed to *secure the payment of such advances as might be made.* The supplies and money ad-

vanced to the Butlers during the year 1867, exclusive of commissions and interest, amounted to $5,457.40. The cotton crop grown during that year was shipped and sold, and the proceeds of sale, amounting to $1291.83 was applied to the credit of the account, leaving a balance due of $4175.57, exclusive of commissions and interest. In the account rendered to the Butlers by Summers & Brannins, the notes are debited, and the account credited with proceeds, realized by discounting them in the Canal Bank of New Orleans, amounting to $4,503 08, but the notes are not charged until *after their maturity*, when they were of course taken up by the Factors. The balance due by account rendered on the 19th February, 1868, was $4774.69, the result of the planting operations during the year 1867.

Being desirous of continuing their planting operations during the year 1868, the Butlers applied to the said Summers & Brannins, who agreed to make them. For the purpose of securing the advance during this year made, the Butlers executed and delivered to one Hilliard as Trustee for the benefit of said factors, a trust deed conveying their anticipated crop of corn and cotton, and binding themselves to ship the cotton as soon as grown and ready for market, with the understanding that the nett proceeds of sale should be applied, in the first instance, to the payment of the advance for the year 1868, and the residue, if any, to the balance of $4774.69 due by the account for 1867. This trust deed contains, among others, the following recital: "That whereas the said Summers & Brannins did advance to the said R. M. & B. Butler during the year 1867 a large amount of money for the purpose of aiding them in making a crop of corn and cotton, &c., which advances were secured by the joint obligation of the said Butlers and of Eugene Roach and J. W. Roach, secured by mortgage on real estate, and whereas there was due, on the 19th February, 1868, a large balance to said Summers & Brannins, to-wit: The sum of forty seven hundred and seventy-four dollars and sixty cents, which balance together with ten per cent. interest since that date is still due and unpaid. And whereas it may be necessary, in order to enable the said R. M. & B. Butler to cultivate another crop, that said Summers & Brannins should furnish them some further supplies. Now, in order the further to secure said Summers & Brannins for the amount already due and unpaid as aforesaid, as well as for any further advances that they may make on the crop growing and to be grown the present year, together with interest and commissions as aforesiad." The deed was in effect a contract lien under the Act of the Legislature of the State of Mississippi, entitled "An Act for the encouragement of Agriculture,"

approved February 18, 1867, and was properly executed and enrolled. By the very terms of this Act, advances made under this contract lien, constituted a *prior lien* upon the crops grown, and were entitled to *prior satisfaction out* of the proceeds of sale thereof. Acts 1866 and 1867, p. 569. By the account rendered to the Butlers on 15th March, 1869, it appears that the amount advanced during the year 1868, without interest or commissions, amounted to the sum of $2163.94, and the proceeds of sale of the cotton crop of that year, without interest, to $3721.08, leaving a balance of $1657.14, exclusive of interest and commissions, to be applied to the balance of the account of 1867, after adding to that balance the interest and commissions due, by the contract of the parties, of 2½ per cent. for advancing and ten per cent. interest. See exhibit to deposition of R. M. Butler. The deed of trust to Hilliard, or contract lien as it might be more properly termed, marked Exhibit D. to the bill of complaint, expressly declares, that it is given as further and additional security, and is in no way to affect or invalidate the security already held by Summers & Brannins, for the balance due to them in the account of 1867.

A portion of the cotton crop of 1868 was attached for rent due Eugene Roach, and the proceeds, after payment of incidental expenses, were turned over by him to Summers & Brannins, and were by them placed to the credit of the Butler account for that year. It is claimed that this should have have gone to the credit of the mortgage debt, instead of being placed to the credit of the supply account of 1868. The fifteen bales seized and sold under the attachment for rent netted $1,269.15, and the account rendered to the Butlers on the 15th March, 1869, shows that there was a larger amount than this carried from the account of 1868 to the credit of the balance due by the account containing the detailed transactions for the year 1867. So that this assertion of claim really is specious; and if not, under the laws of this State, the factors had a *prior lien* upon the cotton, and were entitled to the proceeds of sale in preference to Mr. Roach. Standing in the attitude of a landlord, without a mortgage upon the crop, he had no lien of any kind until his attachment was levied, and then only could hold as a junior encumbrancer, the deed to Hilliard or contract lien having been duly enrolled in the Circuit Clerk's office. This has been so frequently decided by the Supreme Court of Mississippi, that it is not regarded as a debatable question. Marye vs. Dyche, 42 Miss., 347; Stamps vs. Gilman, 43 Miss., 456; Bain vs. Brooks, 46 Miss., 537; Howard vs. Simmons, 43 Miss., 75.

The only defense worth considering at all is that made by Roach.

His answer plainly shows that the notes and mortgage were given as security merely for the payment of any advances that might be made by Summers & Brannins to the Butlers, and that he and J. W. Roach were to be liable thereon only for the amount of the supplies actually advanced. And yet he insists that the dealings between the factors and the Butlers, subsequent to the execution of the mortgage, as shown particularly by the account above referred to, in which the Butlers are credited with the proceeds of the notes discounted and charged with them at their maturity, amount to an abandonment of the mortgage, and operate as a release of Roach. In other words, that the *charging* in Butler's account of the two notes for $2,500 each, was a payment as to Eugene Roach and J. W. Roach, and an extinguishment of the mortgage. There are several sufficient answers to this position. The entry in the account is in these words: "*To joint note due this day.*" And the account does not, on its face, show that Summers & Brannins ever *intended* either to pay or charge for paying the notes. The entry is not of such a character, and the whole paper shows that this was a mere form adopted to keep the account in an intelligible shape, and with no purpose or intent of cancelling or releasing the mortgage security. It was a mere memorandum statement of the facts to show the balance due, according to the understanding of the parties, for which the mortgage securities were available. Taft vs. Boyd, 13 Allen (Mass.,) 84. The question is not as to the personal liability of Eugene Roach and J. W. Roach upon the note, nor its discharge, but as to the liability of the mortgaged premises. The defendants, appellants, do not seem to have appreciated the distinction, for if they had, the defense would scarcely have been presented. Tripp vs. Vincent, 3 Barb., Ch. 614. There is no rule more familiar than this: that nothing but absolute payment of the mortgage debt can destroy the lien. It is a rule founded upon the express condition to the deed itself and uniformly sustained by the Courts. Heard vs. Evans, Freeman's Ch. R., (Miss.,) 79; Parkhurst vs. Cummings, 56 Me., 155; Donnelly vs. Simonton, 13 Minn., 301; Babcock vs. Morse, 19 Barb., 140; Choleau vs. Thompson, 3 Ohio, (N. S.,) 624; Cleveland vs. Martin, 2 Head, 128; Spring vs. Hill, 6 Cal., 17; Morse vs. Clayton, 13 S. & M., 573; McDonald vs. McDonald, 16 Ver., 630; Davis vs. Maynard, 9 Mass., 247. Aside from this, the notes and mortgage were given as security for a debt for supplies to be created in the future and remain otherwise unpaid; and, by the agreement of parties, the mortgage and notes were to be securities only to the extent of the supply debt remaining unpaid. This of itself negatives the idea of satisfaction. It is well settled in Missis-

sippi, and elsewhere, that a mere change in the form of the evidence of indebtedness will not operate to discharge a lien given to secure the debt, unless it be apparent that the parties intended to extinguish the lien. While the debt exists the lien remains. Lewis vs. Starke, 10 S. & M., 120. So far from its being the intention of the parties in this case, that the entry of the notes on the debit side of the account should constitute a payment as to Roach, the evidence is directly to the contrary. The notes were not cancelled as mere vouchers for the charge, but were carefully preserved by the factors, and the contract lien of 1868 expressly states that the mortgage lien for the account balance of 1867 was to be and remain unimpaired.

It is urged by Butler that the appellees were indebted to them for services rendered, and had violated the conditions of the agreement between the parties as to the advances which they were to make. There is no proof upon the latter branch of the plea, though it is admitted that Butler rendered some service to the appellee, and was possibly entitled to some compensation, though the Commissioner decided otherwise.

Upon the case as presented, the learned Judge decided, as he usually does, according to the well established principles of equity. The mortgage was recognized as a valid existing lien to secure any balance which the Butlers might owe on account of the farming operations of 1867, and an account directed to be taken of the money and supplies advanced, with commissions and interest to the end of that year, and the nett proceeds of all cotton for that year to be credited. It was further directed that the account for 1868 should be credited with proceeds of sale of the cotton grown by the Butlers during that year; that the balance therein due the Butlers should be applied to the debit balance in the account of 1867, and upon the balance thus found to be due by the Butlers, that interest be calculated up to the reception of the proceeds of sale of the property sold under order of the Court. That the amount so received be credited, as also whatever amount was due the Butlers for services rendered, and that for the balance in account thus found to be due, the mortgage should be foreclosed. This was a perfectly fair and equitable settlement of the whole case, giving, as it did, to Eugene Roach and J. W. Roach, the advantage of every solitary credit which they could in conscience demand. The report of the Commissioner is succinct and thorough, and shows that on the 19th day of May, 1871, the Butlers owed Summers & Brannins $2,733.53 on account of the farming operations of 1867, after allowing all credits.

This report was confirmed and a decree entered for the foreclosure of the mortgage accordingly.

The pretexts set up in the answer of R. M. Butler are perfectly transparent. The agreement was, to pay 10 per cent. interest, and 2½ per cent. commissions, and yet the Court only allowed 8 per cent. The depositions of Summers and Bright disprove the allegations of fraud or unfair dealing in any way. The accounts filed show that every available credit against the indebtedness was applied without any reservation. There was no stipulation as to the extent to which the advances should go, and the accounts of Summers & Brannins are proven fully by the depositions taken in the cause. No commissions are charged, but for money and supplies actually advanced, and the plea of usury comes with poor grace from the author of the letters filed with the proof.

Denuded of all superfluous pleading and argumentation, the case is a simple one. Summers & Brannins agreed to advance money and supplies to the Butlers to enable them to make a crop during the year 1867, on lands leased from Eugene Roach and J. W. Roach, upon the condition that the Butlers would ship their cotton to be sold and the proceeds credited, and that the Roaches would give them notes for $5,000 and a mortgage upon the land as a collateral security for the payment of any balance which the Butlers might owe. Without this collateral security they never would have had any dealings with the Butlers, as Summers swears. There was a large balance due on account of advances made during the year 1867, which was reduced considerably by the crop balance of 1868, the advances to make which had been made by Summers & Brannins under a contract lien, which recognized the account balance of 1867, pledged the cotton to be grown during that year to the payment of the advances for the year 1868, expressly stated that the mortgage was still operative, and provided that the new security should not affect the old, although any balance which might that year be found due to the Butlers, should go the discharge *pro tanto* of the debt for the year 1867. To foreclose the mortgage for the balance due Summers and Brannins, upon a general statement of accounts seems to us to be in exact accordance with the understanding between the parties, and we respectfully submit that the decree of the lower Court should be affirmed with damages and costs.

NUGENT & YERGER,

Attorneys for Appellees.

245 Judge Davy

IN THE

Supreme Court of the United States.

No. 245.—October Term, 1873.

EUGENE ROACH & NAYLOR ROACH, Appel'ts,

vs.

EDWIN SUMMERS, JOHN S. BRANNINS & OTHERS.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

BRIEF OF COUNSEL FOR APPELLEES.

This is an appeal from a decree foreclosing a mortgage made 12th February, 1867, by Eugene Roach and J. W. Roach, the father of Naylor Roach, since deceased, to secure Summers & Brannins, cotton factors at New Orleans, for advances to be made by them to R. M. & B. Butler, planters and tenants of the Roaches. Two notes were executed by the Roaches & Butlers, dated February 1, 1867, payable on 15th of October and 5th November following, each for $2,500, payable to Summers & Brannins, with 8 per cent. interest after maturity, and the mortgage was to secure payment of these notes or any balance due on them.

The Butlers carried on the business during the years 1867 and 1868. In 1867 Summers & Brannins advanced them $5,655.20, (see report of Commissioner, p. 100,) and after allowing for all shipments, there was a balance due them on 13th February, 1868, of $4,497.90. —(p. 101.) For the year, 1868, a contract, dated 2d April, (p. 7,) was then entered into between Summers & Brannins under the act of 18th February, 1867, entitled an act for "the encouragement of agriculture," which was filed in the office of the clerk of the circuit court for Yazoo county, in pursuance of which a lien was given on the crops of that year to secure the advances to be made to cultivate them. By the proceeds of the crops of this year the advances were paid and a credit allowed on the account of 1867, which reduced the balance on 22d February, 1870, to $3,614.16. By an order of the court the sum of $1,144.74, collected in a proceeding instituted against the Butlers by the Roaches, was also applied to this account, reducing the balance on 19th May, 1871, to $2,733.53, for which amount the decree of foreclosure was entered.

There was also a contract, dated 19th February, 1867, (p. 19,) between Summers & Brannins and the Butlers relative to the crops of that year, which stipulated that S. & B. should receive 10 per cent. interest on advances and 2½ per cent. commission. It contained, also, the form of an agreement to give S. & B. an interest in the cotton crop of that year, but as the number of bales in which they were to be interested is blank, the clause is a nullity.

ARGUMENT.

1. Appellants contend that this agreement and that of 1868 (p. 8) superseded the agreement with them, and relieved them from liability. No attempt is made to show how the appellants were prejudiced by these agreements. Ten per cent. interest was not allowed on the advances as stipulated by the contract of 19th February, but only 8 per cent., as stipulated in the notes of appellants. The mere execution of the contract certainly did not revoke that with the Roaches, and was not made by the parties with any view to superseding it. The two contracts contemplated different contingencies. That with the Roaches would become operative only in case the Butlers failed in their enterprise, whilst that with them would take effect only in case they succeeded, and from their nature could not interfere with each other. It could not have concerned the Roaches if the Butlers had paid ten per cent. on the advances, provided the net proceeds of the cotton shipped had paid off the advances made in 1867 to cultivate it. It wa only when by the failure of the crop the mortgage of the Roaches had to be looked to by the factors, that the terms of settlement with them by the Butlers became material; and as it is not pretended that the contract of 19th of February affected the decree, or that it has been operative at all, there can be no error to complain of in it.

Nor did the contract of 1868 supersede that with the Roaches, or release the mortgage, or operate to prejudice their rights. On the contrary the effect of it has been highly beneficial to them. No further advances could then be made by Summers and Brannins under the contract with the Roaches. They were liable "only for the amount of supplies actually advanced or furnished for 1867."—(Answer of Roach, p. 15.) But, as the agreement in question recites, p. 7, it was necessary, "in order to enable said R. M. & B. Butler to cultivate another crop,

that said Summers & Brannins should furnish them some further supplies. Now, in order the further to secure Summers & Brannins for the amount already due and unpaid, as well as for any further advances that they may make on the crop growing or to be grown the present year," they convey all such crops, &c. The result was, as stated above, that besides repaying the advances for the year they paid $1,500 on account of the previous year.

It is claimed in another point that the advances of this year should have been first paid, and not merely the $1,500, but all the proceeds of the crop, as well as that of '67, should have been applied to extinguish the liability of the Roaches. This point will be considered separately. The question here is only whether the contract of itself, or in its operation, superseded that with the Roaches, and discharged them. We say not, because on its face it recognizes the previous contract as a subsisting and valid contract, with which it did not interfere except to furnish additional security for its performance. There could be no result from it prejudicial to the Roaches. Without the advances the Butlers must have failed, thus leaving them liable for $4,400. They had none of the risk of the new advances, but might receive, and did in fact receive, of the benefit of those advances in the extinguishment of $1,500 of their liability.

2 & 3. The 2d and 3d points are substantially the same. Both assert that the crop of 1868 should have been credited first upon the advances of 1867, and not first upon the advances which were made to produce it, in accordance with the contract lien of the 2d of April, which was duly acknowledged and put of record, as required by the statute, on the 1st day of May, 1868.—(p. 8.)

There is certainly no equity in this claim. If it is to be supported at all it can be only by positive contract. Such a contract is supposed to be proved, 1st, by the answer of Eugene Roach, p. 15; by that of Butler, p. 25;

and Butler's deposition, p. 85. The answer of Roach, after saying that his liability was only for the supplies furnished for 1867, proceeds as follows: "This respondent further answering says, that it was agreed and understood by and between said complainants and said Butlers, that all the crops of cotton raised on said plantations, *so leased* to said Butlers, should be applied to the payment of the aforesaid promissory notes." It will be observed that Roach is careful not to say that the crops of any other year than that already spoken of were agreed to be so applied; and in his deposition he says it was *the* cotton *crop* that should be so applied. But his meaning is put beyond question by the statement with which his answer opens, viz., that the lease was for the year 1867, and it was the crops of the plantation *so leased*, i. e. for that year, that were to be credited on the notes. He admits knowledge of the contract lien in the fall of 1868, and yet in November he paid over the proceeds of the fifteen bales he attached at Vicksburg, showing conclusively that his present claim is an afterthought.

Butler, in his deposition, in reply to the leading question whether "there was any agreement that all the cotton shpped * * for the year 1867, as well as for subsequent years, was * * to be applied to the payment of said notes in preference to any other debts against you?" answered that "there was such an agreement."

But an examination of the several depositions of this witness will satisfy the court that he is wholly unreliable. He trumped up and swore to a large set-off against the complainants, claiming to have previously presented it to them. But Summers says (p. 51) no such claim was ever heard of till Butler was caught by Roach in the act of diverting his cotton to other houses, and attached it at Vicksburg. It was only after he was foiled in an attempt to swindle, not only his factors, but his friends, the Roaches, that he set up the off-set, which he swore to in

the most positive manner. But the commissioner, discrediting his testimony wholly, disallowed every item of it.

The supposed oral contract is at variance with the written contract of 1868, p. 7.

The parties could not have contemplated disposing of the crop of '68 in February, 1867, because the lease then extended only to 1867.—(Roach's answer, p. 15.)

It requires no straining of the contract of '67, even on the appellants' version of it, to allow payment for supplies which were necessary to the cultivation of the crop of 1868, before applying its proceeds to the notes of the Roaches. The supplies necessary to cultivate a crop, and these were of that character, (see contract lien, p. 7,) cannot be distinguished from other expenses, such as freight, which are regarded as incident to bringing it to market; and when parties agree that a crop shall be applied to pay a certain liability in preference to all other *debts*, this would not exclude the payment of wages and provisions—outlays which are necessary to the creation of the article pledged. Such a construction of the contract would disable the planter from executing it, and so defeat it altogether.

Butler does not state that the contract in question was made with the Roaches, or that they, in consideration of it, made the notes and mortgage.

The answer does not allege such a contract, and, therefore, it is immaterial what the proof is.

Summers did not contradict Butler directly, probably because unaware of his statement on this point at the time of giving his deposition. He contradicts it by implication, because he says, p. 51, the contract of 1867 was to aid the Butlers "*in making a crop*," showing that the parties had only in view the current year.

4. The remaining point, that *money* was not *supplies* within the meaning of the contract, that its advance was

a fraud on the Roaches, and, hence, not to be charged to them, is not sustained by the evidence cited to support it. The language of the letter of 15th March, 1867, (marked exhibit 3, p. 21,) which is relied on, is as follows: "You will please bear in mind a specialty of our agreement—that you would draw for amounts to pay for mules and some oxen; the balance was to be furnished by us in supplies; nearly all the amount has been absorbed in drafts." Instead of showing that the parties did not recognize money as supplies, the contrary is established by the language, for it says pointedly that a part of the supplies was to be in money, and they complain that the Butlers had taken too much of them in this form, and the ground of the complaint was that by so doing they were defrauded of their legitimate profits in the purchase of supplies in other forms.

M. BLAIR,

MARCH, 1874. F. A. DICK.